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THE
FEDERAL BUREAU OF INVESTIGATION
UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, D. C. 20535



Replaced by Circular 1903 (11/58)

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**TITLE 43—PUBLIC LANDS:
INTERIOR**

**Chapter I—Bureau of Land Management,
Department of the Interior**

[Circ. 1900]

**PART 200—MINERAL DEPOSITS IN ACQUIRED
LANDS AND UNDER RIGHTS-OF-WAY**

**FILING OF APPLICATIONS FOR MINERAL PER-
MITS OR LEASES**

Section 200.34 is hereby amended to
read as follows:

§ 200.34 *Filing of applications for
mineral permits or leases.* On and after
February 3, 1955 applications for permits
or leases shall be filed in the proper land
office as set forth in § 200.8 (b) by any
citizen of the United States or corpora-
tion organized and existing under the
laws of the United States or any State
thereof, or Territory thereof.

(Sec. 10, 61 Stat. 915; 30 U. S. C. 359)

DOUGLAS MCKAY,
Secretary of the Interior.

FEBRUARY 3, 1955.

[F. R. Doc. 55-1206; Filed, Feb. 10, 1955;
8:46 a. m.]

Published in 20 F. R. February 11, 1955

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter A—Alaska

[Circular 1901]

PART 79—TIMBER

SMALL SALES OF TIMBER FOR USE IN ALASKA

Sections 79.15 to 79.31, inclusive, are repealed and the following is substituted therefor, to take effect 60 days after date of approval.

- Sec.
79.15 Definitions.
79.16 Lands from which timber may be sold.
79.17 Appraised prices.
79.18 Application; who may purchase.
79.19 Cash deposit.
79.20 Permits.
79.21 Amendment of permit.
79.22 Subsequent claim subject to timber application.
79.23 Revocation of permit.
79.24 Removal of personal property upon termination of permit.
79.25 Appeals.

AUTHORITY: §§ 79.15 to 79.25 issued under sec. 11, 30 Stat. 414, as amended; 48 U. S. C. 421.

§ 79.15 *Definitions.* (a) "Bureau" means Bureau of Land Management.

(b) "Authorized Officer" means the Bureau official who has been authorized to issue a permit for the disposal of timber on public lands in Alaska, and to supervise and take action in regard to such permit.

(c) "Sale value" means the value of the stumpage sold under permit from the area.

§ 79.16 *Lands from which timber may be sold.* Timber may be sold from vacant public lands in Alaska, and from withdrawn public lands in Alaska when permitted by the order of withdrawal.

CROSS REFERENCES: For timber sales in Alaska not authorized by this part, see Part 4 of this chapter. For timber sales on all sections reserved for the Territory of Alaska, see § 76.1 of this chapter. For timber sales for export, see §§ 79.33 to 79.41.

§ 79.17 *Appraised prices.* No sales may be made below the appraised prices established by the Area Administrator.

§ 79.18 *Application; who may purchase.* (a) An application to purchase timber should be submitted on Form 4-023 which may be obtained from any office of the Bureau in Alaska. The application should be filed in the land office for the district in which the timber desired is situated, or in any forestry office of the Bureau in Alaska. It must be accompanied by a deposit in accordance with § 79.19.

(b) The application may be made by an individual, a partnership, an unincorporated association, or a corporation organized under the laws of the United States, or of a State or Territory thereof, and authorized to transact business in Alaska.

§ 79.19 *Cash deposit.* (a) If the estimated sale value of the timber applied for equals or exceeds \$25, the application must be accompanied by a deposit of \$25, or 15 percent of the estimated sale value, whichever is the greater. If the

estimated sale value is less than \$25, a deposit representing the full estimated sale value must be made.

(b) The deposit may be in the form of cash, a money order, cashier's check, certified check, or personal check made payable to the Bureau of Land Management. At the discretion of the authorized officer, larger deposits—up to the full sale value—may be required before the permit is issued.

(c) In the discretion of the authorized officer, a performance bond may be required of not less than 25 percent of the sale value. Upon satisfactory completion of the permit the bond, if in cash or securities will be returned to the permittee, and if in the form of a surety bond will be cancelled.

(d) After a permit is issued, the minimum deposit is not returnable, even if no timber has been cut. Where the value of the timber to be cut exceeds the amount of the deposit, the deposit will be credited as partial payment against the total sale value.

(e) Additional payments shall be made by the permittee at the request of the authorized officer, or when the value of the timber cut equals the amount of the deposit plus previous payments. The computed volume, based on an inventory of stumps made by the authorized officer shall be prima facie evidence in establishing the volume of forest products cut by the permittee.

§ 79.20 *Permits.* (a) A permit to cut and remove timber will be issued on Form 4-023. The authorized officer may, in his discretion, reject the application, or he may amend or otherwise limit the area, species, products, or volume applied for or add such additional provisions and conditions which, in his opinion, are required by sound forest practices, provided the applicant consents. If the applicant refuses consent his deposit will be refunded. Notice of Permit to Cut Timber, Form 4-023a, must be posted in a conspicuous place on the land, before any timber is cut.

(b) Permits will be valid for one year unless an extension is granted. Extensions will be granted only on a showing that the permittee, because of matters beyond his control, was unable to cut and remove the timber within the life of the permit and that the interests of the Government will not be prejudiced by the extension.

(c) Where, after the issuance of a permit and before the timber covered thereby is cut and removed the timber is destroyed or damaged, in whole or in part, without fault on the part of the permittee or his agent, the authorized officer, in his discretion, may grant the permittee relief by the amendment of the permit to include an equivalent value of other timber.

§ 79.21 *Amendment of permit.* The original permit may be amended at any time during the permit year with the consent of the permittee. For example, the permit volume might be increased to meet additional requirements of the permittee.

§ 79.22 *Subsequent claim subject to timber application.* When a valid homestead, mining or other claim is initiated on public land subsequent to the issuance of a permit to cut timber and the posting on the land of Notice of Permit to Cut Timber (Form 4-023a), such subsequent claimant's rights are subject to the right of the timber applicant to cut and remove the timber covered by the permit.

§ 79.23 *Revocation of permit.* A permit may be revoked for failure of the permittee to comply with the provisions of these regulations; or with the terms of the permit. If cutting is being done in violation of the terms of the permit, any authorized officer of the Bureau may order the cutting stopped, revoke the permit, and demand such additional payment for the timber as may be due the Government.

§ 79.24 *Removal of personal property upon termination of permit.* (a) Upon termination of a permit the permittee shall have the right at any time within 60 days thereafter to remove his equipment, improvements, or other personal property from the Government land, provided all charges due the United States under the permit have been paid. The authorized officer, in his discretion, may grant requests for a reasonable extension. Any improvements, equipment, or personal property remaining on the Government land after the time for removal has expired shall become the property of the United States.

(b) Improvements needed by the permittee for the severance, extraction, or removal of other Government-owned materials under existing contracts or permits may be left on the Government land for such period and under such terms as may be prescribed by the authorized officer.

§ 79.25 *Appeals.* A party aggrieved by any official action involving his application or permit may appeal to the Director, Bureau of Land Management, and from the Director to the Secretary of the Interior, pursuant to the rules of practice contained in Part 221 of this chapter.

NOTE: The record keeping or reporting requirements of this regulation have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

DOUGLAS MCKAY,
Secretary of the Interior.

FEBRUARY 18, 1955.

[F. R. Doc. 55-1682; Filed, Feb. 25, 1955; 8:47 a. m.]

Published in 20 F. R. February 26, 1955

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1902
PROPOSED RULE MAKING

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[43 CFR Part 186]

Office copy
Replaced by Circular 1920
(11/58)

MULTIPLE DEVELOPMENT OF MINERAL DEPOSITS UNDER MINING AND MINERAL LEASING LAWS

Notice is hereby given that pursuant to the authority vested in the Secretary of the Interior by the act of August 13, 1954 (68 Stat. 708) and Revised Statutes 2478 (43 U. S. C. 1201), it is proposed to issue regulations implementing the said Act of August 13, 1954, supra, so far as is necessary. Primary purposes of the act include the establishment of a system of multiple mineral development by permitting mining and mineral leasing on the same tracts of public domain lands and on such patented lands in which the United States has reserved the mineral deposits; validation of certain mining claims within specified dates; the elimination of fissionable source materials reservations in patents, permits, leases or other authorizations of the United States covering such lands and the determination that valid mining locations may be made for fissionable source materials on the lands mentioned.

The proposed regulations and pertinent forms, Nos. 1 to 6, inclusive, are set forth as appendices to this notice.

Interested persons may submit in triplicate written comments, suggestions, or objections with respect to the proposed regulations or forms to the Bureau of Land Management, Washington 25, D. C., within 30 days from the date of publication of this notice in the FEDERAL REGISTER.

Dated: March 7, 1955.

DOUGLAS McKAY,
Secretary of the Interior.

[Circular No. 1902]

A new part 186 is added to Title 43, Chapter I, reading as follows:

PART 186—MULTIPLE DEVELOPMENT OF MINERAL DEPOSITS UNDER THE MINING AND MINERAL LEASING LAWS

- Sec.
- 186.1 Purpose and authority.
- 186.2 Validation of certain Mining Claims.
- 186.3 Preference mining locations.
- 186.4 Additional evidence required with application for patent.
- 186.5 Reservation to United States of Leasing Act minerals.
- 186.6 Mining claims and millsites located on Leasing Act lands after August 13, 1954.
- 186.7 Procedure to determine claims to Leasing Act minerals under unpatented mining locations.
- 186.8 Recordation of notice of application, offer, permit or lease.
- 186.9 Request for publication of notice of Leasing Act filing; supporting instruments.
- 186.10 Publication of request.
- 186.11 Contents of published notices.
- 186.12 Mailing of copies of published notice.
- 186.13 Service of copies; failure to comply.
- 186.14 Proof of publication.
- 186.15 Failure of mining claimant to file verified statement.
- 186.16 Hearing-time and place.
- 186.17 Stipulation between parties.
- 186.18 Hearing; procedure.
- 186.19 Effect of decision affecting a mining claimant's rights.
- 186.20 Recording by mining claimant of request for copy of notices.
- 186.21 Relinquishment by mining claimant of Leasing Act minerals.
- 186.22 Helium Reserves Nos. 1 and 2; conditions of opening to mining locations and mineral leasing.
- 186.23 Fissionable source materials; elimination of reservation in patents, etc.
- 186.24 Elimination of fissionable source materials reservation.
- 186.25 Mining locations for fissionable source materials.

AUTHORITY: §§ 186.1 to 186.25 issued under the Act of August 13, 1954 (68 Stat. 708) and R. S. 2478; 43 U. S. C. 1201.)

CROSS REFERENCES: Act of August 12, 1953 (67 Stat. 539, 30 U. S. C. 501-503); validating certain mining claims located subsequent to July 31, 1939, and prior to January 1, 1953; Atomic Energy Act of August 1, 1946 (60 Stat. 755), as amended; Act of October 20, 1914 (38 Stat. 741); Acts of February 25, 1920 (41 Stat. 437), April 17, 1926 (44 Stat. 301) and February 7, 1927 (44 Stat. 1057) and all acts amendatory of and supplementary thereto known as the Mineral Leasing Acts. See Volume 43 CFR, Parts 191 to 196, inclusive, 198, and other appropriate sections of the regulations; also 30 U. S. C. sec. 22, U. S. Mining Laws—43 CFR, Part 185.

§ 186.1 *Purposes and authority.* The act of August 13, 1954 (68 Stat. 708) was enacted "To amend the mineral leasing laws and the mining laws to provide for multiple mineral development of the same tracts of the public lands, and for other purposes." The regulations in this part are intended to implement only those sections of said act, hereinafter more fully identified, which require action by the Department of the Interior or its agencies.

§ 186.2 *Validation of certain mining claims.* The act in section 1 (a) provides as follows:

That (a) subject to the conditions and provisions of this Act and to any valid intervening rights acquired under the laws of the United States, any mining claim located under the mining laws of the United States subsequent to July 31, 1939, and prior to February 10, 1954, on lands of the United States, which at the time of location were—

(1) included in a permit or lease issued under the mineral leasing laws; or

(2) covered by an application or offer for a permit or lease which had been filed under the mineral leasing laws; or

(3) known to be valuable for minerals subject to disposition under the mineral leasing laws, shall be effective to the same extent in all respects as if such lands at the time of location, and at all times thereafter, had not been so included or covered or known: *Provided, However, That, in order to be entitled to the benefits of this act, the owner of any such mining claim located prior to January 1, 1953, must have posted and filed for record, within the time allowed by the provisions of the Act of August 12, 1953 (67 Stat. 539),¹ an amended notice of location as to such mining claim, stating that such notice was filed pursuant to the provisions of said Act of August 12, 1953, and for the purpose of obtaining the benefits thereof: And provided further, That in order to obtain the benefits of this act, the owner of any such mining claim located subsequent to December 31, 1952, and prior to February 10, 1954, not later than one hundred and twenty days after the date of enactment of this act,² must post on such claim in the manner required for posting notice of location of mining claims and file for record in the office where the notice or certificate of location of such claim is of record an amended notice of location for such claim, stating that such notice is filed pursuant to the provisions of this act, and for the purpose of obtaining the benefits thereof and, within said one hundred and twenty day period,³ if such owner shall have filed a uranium lease application as to the tract covered by such mining claim, must file with the Atomic Energy Commission a withdrawal of such uranium lease application or, if a uranium lease shall have issued pursuant thereto, a release of such lease, and must record a notice of the filing of such withdrawal or release in the county office wherein such notice or certificate of location shall have been filed for record.*

§ 186.3 *Preference mining locations.* The act in section 3 (a) and (b) provides as follows:

(a) Subject to the conditions and provisions of this Act and to any valid prior rights acquired under the laws of the United States, the owner of any pending uranium lease application or of any uranium lease shall have, for a period of one hundred and twenty days after the date of enactment of this Act,² as limited in subsection (b) of this section 3, the right to locate mining claims upon the lands covered by said application or lease.

(b) Any rights under any such mining claim so hereafter located pursuant to the provisions of subsection (a) of this section 3 shall be subject to any rights of the owner of any mining claim which was located prior to February 10, 1954, and which was valid at the date of the enactment of this Act or which may acquire validity under the provisions of this Act. As to any lands covered by a uranium lease and also by a pending uranium lease application, the right of mining location under this section 3, as between the owner of said lease and the owner of said application, shall be deemed as to such conflict area to be vested in the owner of said lease. As to any lands embraced in more than one such pending uranium lease application, such right of mining location, as between the owners of such conflicting applications, shall be deemed to be vested in the owner of the prior application. Priority of such an application shall be determined by the time of posting on a tract then available for such leasing of a notice of lease application in accordance with paragraph (c) of the Atomic Energy Commission's Domestic Uranium Program Circular 7 (10 CFR 60.7 (c)) provided there shall have been timely compliance with the other provisions of said paragraph (c) or, if there shall not have been such timely compliance, then by the time of the filing of the uranium lease application with the Atomic Energy Commission. Any rights under any mining claim located under the provisions of this section 3 shall terminate at the expiration of thirty days after the filing for record of the notice or certificate of location of such mining claim unless, within said 30-day period, the owner of the uranium lease application or uranium lease upon which the location of such mining claim was predicated shall have filed with the Atomic Energy Commission a withdrawal of said application or a release of said lease and shall have recorded a notice of the filing of such withdrawal or release in the county office wherein such notice or certificate of location shall be of record.

§ 186.4 *Additional evidence required with application for patent.* All questions between mining claimants asserting conflicting rights of possession under mining claims, must be adjudicated in the courts. Any applicant for mineral patent, who claims benefits under sections 1 or 3 of this act, or the act of August 12, 1953, supra, in addition to matters required in Part 185 of this Title, must file with his Application for Patent a certified copy of each instrument required to have been recorded as to his mining claim in order to entitle it to such benefits unless an Abstract of Title or Certificate of Title filed with the Application for Patent shall set forth said instruments in full. The applicant must also file a copy of the notice required to be posted on the claim and state in his application that such notice was duly posted in accordance with the requirements of the act.

§ 186.5 *Reservation to United States of Leasing Act minerals.* Section 4 of the act provides that:

Every mining claim or millsite—

(1) heretofore located under the mining laws of the United States which shall be entitled to benefits under the first three sections of this Act; or

¹ Not later than December 10, 1953.

² Not later than December 11, 1954.

³ Not later than December 11, 1954.

(2) located under the mining laws of the United States after the effective date of passage of this act, shall be subject, prior to issuance of a patent therefor, to a reservation to the United States of all Leasing Act minerals and of the right (as limited in section 6 hereof)⁴ of the United States, its lessees, permittees, and licensees to enter upon the land covered by such mining claim or millsite and to prospect for, drill for, mine, treat, store, transport, and remove Leasing Act minerals and to use so much of the surface and subsurface of such mining claim or millsite as may be necessary for such purposes, and whenever reasonably necessary, for the purpose of prospecting for, drilling for, mining, treating, storing, transporting, and removing Leasing Act minerals on and from other lands; and any patent issued for any such mining claim or millsite shall contain such reservation as to, but only as to, such lands covered thereby which at the time of the issuance of such patent were—

(a) included in a permit or lease issued under the mineral leasing laws; or

(b) covered by an application or offer for a permit or lease filed under the mineral leasing laws; or

(c) known to be valuable for minerals subject to disposition under the mineral leasing laws.

§ 186.6 *Mining claims and millsites located on Leasing Act lands after August 13, 1954.* (a) Since enactment of the act on August 13, 1954, and subject to its conditions and provisions, including the reservation of Leasing Act minerals to the United States as provided in section 4, mining claims and millsites may be located under the mining laws of the United States on lands of the United States which at the time of location are—

(1) Included in a permit or lease issued under the mineral leasing laws; or

(2) Covered by an application or offer for a permit or lease filed under the mineral leasing laws; or

(3) Known to be valuable for minerals subject to disposition under the mineral leasing laws;

to the same extent in all respects as if such lands were not so included or covered or known.

(b) The Leasing Act minerals in lands covered by mining claims and millsites located after the date of the act or validated by the act may be acquired under the mineral leasing laws, upon appropriate application therefor being filed prior to the issuance of patent to such mining claims or millsites.

§ 186.7 *Procedure to determine claims to Leasing Act minerals under unpatented mining locations.* Section 7 of the act provides a procedure whereby a Leasing Act applicant, offeror, permittee or lessee may have determined the existence and validity of claims to Leasing Act minerals asserted under unpatented mining locations made prior to August 13, 1954, affecting lands embraced within such application, offer, permit or lease. This procedure is described in the succeeding §§ 186.8 to 186.19, inclusive, and involves the prior recording of notice of such application, offer, permit or lease and the filing of a request for publication of notice of the same as provided in §§ 186.8 and 186.9.

§ 186.8 *Recordation of notice of application offer, permit or lease.* (a)

Not less than 90 days prior to the filing of such request for publication, there must have been filed for record in each county in which lands covered thereby are situate, a notice of the filing of the application or offer, or of the issuance of the permit or lease, upon which said request for publication is based. Such notice must set forth the date of the filing of such application or offer or of the issuance of such permit or lease, the name and address of the applicant,

offeror, permittee or lessee, and the description of the lands covered by such application, offer, permit or lease, showing the section or sections of the public land surveys which embrace such lands, or, if such lands are unsurveyed, either the section or sections which would probably embrace such lands when the public land surveys are extended to such lands, or a tie by courses and distances to an approved United States mineral monument.

(b) Such notice shall conform to Form No. 1 and No. 1-A appended to the regulations in this part.⁵

§ 186.9 *Request for publication of notice of Leasing Act filing; supporting instruments.* (a) Having complied with the requirement of § 186.8, the applicant, offeror, permittee or lessee may file a Request for Publication of notice of such party's application, offer, permit or lease. Such request for publication shall be filed in the Land Office of the Bureau of Land Management for the Land District in which the lands are situated.⁶ As to lands in states for which there are no Land Offices, any request for publication shall be filed with the Director of the Bureau of Land Management, Department of the Interior, Washington 25, D. C. No Request for Publication, or publication, may include lands in more than one Land District.

(b) Any Request for Publication shall conform to Form No. 2 appended to the regulations in this part.⁶

(c) The filing of a Request for Publication must be accompanied by the following:

(1) A certified copy of the Notice of Application, offer, permit or lease recorded as required under § 186.8, setting forth the date of recordation thereof.

(2) An affidavit or affidavits of a person or persons over 21 years of age, setting forth that the affiant or affiants have examined the lands involved in a reasonable effort to ascertain whether any person or persons were in actual possession of or engaged in the working of the lands covered by such request or any part thereof. If no person or persons were found to be in actual possession of or engaged in the working of said lands or any part thereof, on the date of such examination, such affidavit or affidavits shall set forth such fact. If any person or persons were so found to

be in actual possession or engaged in such working on the date of such examination, such affidavit or affidavits shall set forth the name and address of each such person unless the affiant shall have been unable, through reasonable inquiry, to obtain information as to the name and address of such person; in which event, the affidavit or affidavits shall set forth fully the nature and the results of such inquiry.

(3) The certificate of a title or abstract company, or of a title abstractor, or of an attorney, based upon such company's, abstractor's or attorney's examination of the instruments affecting the lands involved, of record in the public records of the county in which said lands are situate as shown by the indices of the public records in the county office of record for said county, setting forth the name of any person disclosed by said instruments to have an interest in said lands under any unpatented mining claim located prior to enactment of the Act on August 13, 1954, together with the address of such person if disclosed by such instruments of record. Such certificate shall conform to Form No. 3 appended to the regulations in this part.⁶

⁵ Forms filed as part of the original document.

⁶ In this connection, the Land Office for North Dakota and for South Dakota is located at Billings, Montana; that for Nebraska and Kansas, at Cheyenne, Wyoming; and for Oklahoma, at Santa Fe, New Mexico.

§ 186.10 *Publication of request.* (a) Upon receipt of a Request for Publication and accompanying instruments, if no reason appears for rejecting the request, the Manager, at the expense of the requesting person (who prior to the commencement of publication must furnish the agreement of the publisher to hold such requesting person alone responsible for charges of publication), shall cause notice of the application, offer, permit or lease to be published in a newspaper, to be designated by the Manager, having general circulation in the county in which the lands involved are situate.

(b) If such notice is published in a daily paper, it shall be published in the Wednesday issue for 9 consecutive weeks, or, if in a weekly paper, in 9 consecutive issues, or, if in a semi-weekly or tri-weekly paper, in the issue of the same day of each week for 9 consecutive weeks.

§ 186.11 *Contents of published notice.* (a) The notice to be published as required by the preceding section, shall describe the lands covered by the application, offer, permit or lease in the same manner as is required under § 186.8. Such published notice shall notify whomsoever it may concern, that if any person claiming or asserting under, or by virtue of, any unpatented mining claim located prior to enactment of the act of August 13, 1954, any right or interest in Leasing Act minerals as to such lands or any part thereof, shall fail to file in the office where such Request for Publication was filed (which office shall be specified in such notice), and within 150 days from the date of the first publication of such notice (which date shall be specified in such notice), a verified statement which shall set forth, as to such unpatented mining claim:

(1) The date of location;

(2) The book and page of recordation of the notice or certificate of location;

(3) The section or sections of the public land surveys which embrace such mining claim; or if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument;

(4) Whether such claimant is a locator or purchaser under such location; and

(5) The name and address of such claimant and names and addresses so far as known to the claimant of any other person or persons claiming any interest or interests in or under such unpatented mining claim; that such failure shall be conclusively deemed (i) to constitute a waiver and relinquishment by such mining claimant of any and all right, title, and interest under such mining claim as to, but only as to, Leasing Act minerals, and (ii) to constitute a consent by such mining claimant that such mining claim and any patent issued therefor, shall be subject to the reservation of Leasing Act minerals specified in section 4 of the act, and (iii) to preclude thereafter any assertion by such mining claimant of any right or title or interest in any Leasing Act mineral by reason of such mining claim.

(b) Such published notice shall conform to Form 4 appended to the regulations in this part.⁶

§ 186.12 *Mailing of copies of published notice.* Within fifteen days after the date of first publication, the person requesting such publication shall:

(a) Cause a copy of such notice to be personally delivered to or to be mailed by registered mail addressed to each person in possession or engaged in the working of the land whose name and address is shown by the affidavit or affidavits of examination of the land filed, as set forth in § 186.9;

(b) Cause a copy of such notice to be personally delivered to or to be mailed by

⁴ Section 6 of the act defines rights and obligations where the same lands are being used for mining operations and Leasing Act operations.

registered mail addressed to each person who may, on or before the date of first publication, have filed for record, as to any lands described in the published notice, a Request for Notices, as provided in subsection (d) of section 7 of the act (see § 186.18);

(c) Cause a copy of such notice to be mailed by registered mail to each person whose name and address is set forth in the certificate required to be filed under § 186.9; and

(d) File in the office where the Request for Publication was filed an affidavit that copies have been delivered or mailed as herein specified. Notwithstanding the requirements in paragraphs (a), (b) and (c) of this section, not more than one copy of such notice need be delivered or mailed to the same person.

§ 186.13 *Service of copies; failure to comply.* If any applicant, offeror, permittee or lessee requesting publication of notice under these regulations shall fail to comply with the requirements of section 7 (a) of the act as to a personal delivery or mailing of a copy of the published notice to any person, the publication of such notice shall be deemed wholly ineffectual as to that person or as to the rights asserted by that person and the failure of that person to file a verified statement, as provided in such notice shall in no manner affect, diminish, prejudice or bar any rights of that person.

§ 186.14 *Proof of publication.* After the period of newspaper publication has expired, the person requesting publication shall obtain from the office of the newspaper of publication, a sworn statement that the notice was published at the time and in accordance with the requirements under these regulations of this part, and shall file such sworn statement in the Land Office where the Request for Publication was filed.

§ 186.15 *Failure of mining claimant to file verified statement.* If any claimant under any unpatented mining claim located prior to enactment of the act on August 13, 1954, which embraces any of the lands described in any notice published in accordance with the regulations in this part shall fail to file a verified statement, as specified in such published notice (see § 186.11), within one hundred and fifty days from the date of the first publication of such notice, such failure shall be conclusively deemed, except as otherwise provided in § 186.13:

(a) To constitute a waiver and relinquishment by such mining claimant of any and all right, title, and interest under such mining claim as to, but only as to, Leasing Act minerals, and

(b) To constitute a consent by such mining claimant that such mining claim and any patent issued therefor, shall be subject to the reservation of Leasing Act minerals specified in section 4 of the act (see § 186.5), and

(c) To preclude thereafter any assertion by such mining claimant of any right or title to or interest in any Leasing Act mineral by reason of such mining claim.

§ 186.16 *Hearing; time and place.* If any verified statement shall be filed by a mining claimant as contemplated under § 186.11, then the Manager of the Land Office, or the Director, as may be appropriate, shall fix a time and place for a hearing to determine the validity and effectiveness of the mining claimant's asserted right or interest in Leasing Act minerals. Such place of hearing shall be in the county where the lands in question, or part thereof, are located, unless the mining claimant agrees otherwise.

* 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

§ 186.17 *Stipulation between parties.* If at any time prior to a hearing the person requesting publication of notice and any person filing a verified statement pursuant to such notice shall so stipulate, then to the extent so stipulated, but only to such extent, no hearing shall be held with respect to rights asserted under that verified statement, and to the extent defined by the stipulation the rights asserted under that verified statement shall be deemed to be unaffected by the notice published pursuant, to that request.

§ 186.18 *Hearing; procedure.* The procedures with respect to notice of such a hearing and the conduct thereof, and in respect to appeals, shall follow the Rules of Practice of the Department of the Interior and the Bureau of Land Management (43 CFR Part 221) relating to contests or protests affecting public lands of the United States.

§ 186.19 *Effect of decision affirming a mining claimant's rights.* If, pursuant to a hearing held as provided in the regulations of this part, the final decision rendered in the matter shall affirm the validity and effectiveness of any mining claimant's right or interest under a mining claim as to Leasing Act minerals, then no subsequent proceedings under section 7 of the act and the regulations of this part shall have any force or effect upon the so-affirmed right or interest of such mining claimant under such mining claim.

§ 186.20 *Recording by mining claimant of request for copy of notices.* (a) Section 7 (d) of the act provides that:

Any person claiming any right in Leasing Act minerals under or by virtue of any unpatented mining claim heretofore located and desiring to receive a copy of any notice of any application, offer, permit, or lease which may be published as above provided in subsection (a) of this section 7, and which may affect lands embraced in such mining claim, may cause to be filed for record in the county office of record where the notice or certificate of location of such mining claim shall have been recorded, a duly acknowledged request for a copy of any such notice. Such request for copies shall set forth the name and address of the person requesting copies and shall also set forth, as to each mining claim under which such person asserts rights in Leasing Act minerals:

- (1) the date of location;
- (2) the book and page of the recordation of the notice or certificate of location; and
- (3) the section or sections of the public land surveys which embrace such mining claim; or, if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument.

Other than in respect to the requirements of subsection (a) of this section 7 as to personal delivery or mailing of copies of notices and in respect to the provisions of subsection (e) of this section 7, no such request for copies of published notices and no statement or allegation in such request and no recordation thereof shall affect title to any mining claim or to any land or be deemed to constitute constructive notice to any person that the person requesting copies has, or claims, any right, title, or interest in or under any mining claim referred to in such request.

(b) Any request for a copy of notices recorded pursuant to the foregoing section 7 (d) of the act, shall conform to Form No. 6, appended to the regulations in this part.*

§ 186.21 *Relinquishment by mining claimant of Leasing Act minerals.* Section 8 of the act provides that:

The owner or owners of any mining claim heretofore located may, at any time prior to issuance of patent therefor, waive and relinquish all rights thereunder to Leasing Act minerals. The execution and acknowledgment of such a waiver and relinquish-

ment by such owner or owners and the recordation thereof in the office where the notice or certificate of location of such mining claim is of record shall render such mining claim thereafter subject to the reservation referred to in section 4 of this Act and any patent issued therefor shall contain such a reservation, but no such waiver or relinquishment shall be deemed in any manner to constitute any concession as to the date of priority of rights under said mining claim or as to the validity thereof.

§ 186.22 *Helium Reserves Nos. 1 and 2; conditions of opening to mining location and mineral leasing.* (a) Section 9 of the act provides that:

Lands withdrawn from the public domain which are within (a) Helium Reserve Numbered 1, pursuant to Executive Orders of March 21, 1924, and January 28, 1926, and (b) Helium Reserve Numbered 2 pursuant to Executive Order 6184 of June 26, 1933, shall be subject to entry and location under the mining laws of the United States, and to permit and lease under the mineral leasing laws, upon determination by the Secretary of the Interior, based upon available geologic and other information, that there is no reasonable probability that operations pursuant to entry or location of the particular lands under the mining laws, or pursuant to a permit or lease of the particular lands under the Mineral Leasing Act, will result in the extraction or cause loss or waste of the helium-bearing gas in the lands of such reserves: *Provided*, That the lands shall not become subject to entry, location, permit, or lease until such time as the Secretary designates in an order published in the FEDERAL REGISTER: *And provided further*, That the Secretary may at any time as a condition to continued mineral operations require the entrymen, locator, permittee, or lessee to take such measures either above or below the surface of the lands as the Secretary deems necessary to prevent loss or waste of the helium-bearing gas.

(b) No mining location made and no application for permit or lease filed as to Helium Reserve land prior to the time of opening specified in the notice of opening published in the FEDERAL REGISTER will confer any rights on the locator or applicant.

§ 186.23 *Fissionable source materials; elimination of reservation in patents, etc.* Section 10 (c) of the act in its amendment of section 5 (b) 7 of the Atomic Energy Act of 1946 (60 Stat. 755), eliminated the requirement for a reservation of fissionable source materials in patents, conveyances, leases, permits or other authorizations as to public lands or their mineral resources granted by the United States after August 1, 1946, and provided that in cases where any patent, conveyance, lease, permit or other authorization has been issued which reserved to the United States fissionable source materials and the right to enter upon the land and prospect for, mine and remove the same, the head of the department or agency which issued the patent, conveyance, lease, permit or other authorization shall, on application of the holder thereof, issue a new or supplemental patent, conveyance, lease, permit or other authorization without such reservation. The provisions of said section 10 (c) are reenacted in section 68 (c) of the Atomic Energy Act of 1954 (68 Stat. 921, 934).

§ 186.24 *Elimination of fissionable source materials reservation.* (a) Any person who holds a patent, conveyance, conveyance, lease, permit or other authorization issued by the Department of the Interior through the Bureau of Land Management, with a fissionable source material reservation to the United States pursuant to section 5 (b) 7 of the Atomic Energy Act of 1946, prior to its amendment above referred to, and who is desirous of having such reservation eliminated from the patent, conveyance, lease, permit or other authorization, must file an application therefor in the Land Office of the Bureau of Land Management for the Land District in which the lands involved are situated.* As to lands in States for which there are no Land Offices, such application must be

* See footnote 5.

* See footnote 6.

filed with the Director of the Bureau of Land Management, Washington 25, D. C.

(b) Such an application must set forth the name and address of the applicant, must fully identify the instrument from which elimination of such reservation is sought, by serial number, date, name of patentee, grantee, lessee, permittee or other designated recipient of authorization, and must set forth the description of the lands to which the application relates.

(c) If the application is for a new or supplemental patent or other conveyance, the applicant must file with and in support of the application, an abstract of title certified by a duly authorized and licensed abstractor of titles, or a certificate of title certified by a duly authorized and licensed title company, certified in either instance to a date inclusive of the date of the filing of such application and showing the applicant to be the holder and owner, as to the lands covered by the application, of the rights granted by the original patent, or conveyance. Any new or supplemental patent, conveyance, lease, permit or other authorization, issued pursuant to such application, will be issued in the name of the applicant. The successor to any original lease, permit or holder of other authorization is shown by the records of the Bureau of Land Management.

(d) If, as to any lands covered by a patent containing a fissionable source material reservation, any rights have been granted by the United States pursuant to such reservation, then any new or supplemental patent shall be made subject to those rights, but the patentee shall be subrogated to the rights of the United States.

(e) An application for a new or supplemental lease, permit or other authorization, must be filed by the record

holder and owner of such lease, permit or other authorization as shown by the records of the Bureau of Land Management.

(f) If the application (and supporting abstract of title or title certificate, where required) be found to comply with the regulations, in this part, the Manager of the Land Office, will:

(1) Where the application is for a new or supplemental patent or conveyance, transmit the application, including the supporting abstract or title certificate, to the Director of the Bureau of Land Management for appropriate action; or

(2) Where the application is for a new or supplemental lease, permit or other authorization, will forward to the applicant a supplement to and modification of the lease or permit or other authorization setting forth that the fissionable source material reservation of the original lease, permit or other authorization is thereby eliminated from said original lease, permit or other authorization insofar as it relates to the lands covered by the application. No execution by an applicant of a so-issued supplemental and modification instrument shall be required. Such supplemental and modification instrument shall be in accordance with the form hereto attached.^a

(g) Appropriate notation shall be made upon the records of the Land Office in which any application was filed of the issuance pursuant thereto of a new or supplemental patent, conveyance, lease, permit or other authorization.

§ 186.25 *Mining locations for fissionable source materials.* (a) In view of the amendment of section 5 (b) (7) of the Atomic Energy Act of 1946 by section 10 (c) of the act of August 13, 1954 (68 Stat. 708), and of the provisions of the Atomic Energy Act of 1954 (68 Stat. 921), it is clear that after enactment of said act of August 13, 1954, valid mining locations under the mining laws of the United States may be based upon a discovery of a mineral deposit which is a fissionable source material.

(b) As to mining locations made prior to the enactment of said act of August 13, 1954, section 10 (d) of the act provides:

(d) Notwithstanding the provisions of the Atomic Energy Act, and particularly sec. 5 (b) (7) thereof, prior to its amendment hereby, or the provisions of the act of August 12, 1953 (67 Stat. 539), and particularly sec. 3 thereof, any mining claim, heretofore located under the mining laws of the United States for or based upon a discovery of a mineral deposit which is a fissionable source material and which, except for the possible contrary construction of said Atomic Energy Act, would have been locatable under such mining laws, shall, insofar as adversely affected by such possible contrary construction, be valid and effective, in all respects to the same extent as if said mineral deposit were a locatable mineral deposit other than a fissionable source material.

[F. R. Doc. 55-2049; Filed, Mar. 8, 1955; 11:04 a. m.]

^a Not filed with the original document.

Form No. 1. (See Section 186.8)

*APPLICATION
NOTICE OF FILING OF OFFER

TO WHOMEVER IT MAY CONCERN:

NOTICE IS HEREBY GIVEN:

1. That on _____, the undersigned
(Date)

*APPLICANT
OFFEROR _____

Whose address is _____
filed in the Land Office of the Bureau of Land Management,
Department of the Interior, at _____
(Place)

*APPLICATION
an OFFER

for _____
(Kind)

*PROSPECTING PERMIT
LEASE

under and pursuant to the mineral leasing laws as defined in
Section 11 of the Act of August 13, 1954 (68 Stat. 708),
(designated in said Land Office as Serial _____):
and

2. That said *APPLICATION OFFER covers lands in the
County of _____, State of _____,
described as follows, to wit:

Township _____, Range _____, _____ Meridian

(Describe in conformity with requirements
of Section 7(a) of Act of August 13, 1954
(68 Stat. 708; sec 43 CFR 186.8))

DATED _____

*APPLICANT
OFFEROR

*USE Appropriate term.

NOTE: Append proper acknowledgment for individual, or for officer
or other authorized representative of corporation, in
compliance with the laws of the state where the lands are
situated.

*PROSPECTING PERMIT
NOTICE OF ISSUANCE OF LEASE

TO WHOMEVER IT MAY CONCERN:

NOTICE IS HEREBY GIVEN:

1. That on _____ there was issued by the United States
(Date)
of America under and pursuant to the mineral leasing laws as
defined in Section 11 of the Act of August 13, 1954 (68 Stat. 708).

*a

an _____

(Kind)

*PROSPECTING PERMIT
LEASE

to _____

(Name of original Permittee or Lessee)

*PERMITTEE

as LESSEE; and that the undersigned _____

(Name)

whose address is _____

*PERMITTEE

*PERMIT

is the present LESSEE under said LEASE

as to the lands described in Section 2 of this notice, bearing
Serial No. _____, as shown by the records of the Bureau of
Land Management, Department of the Interior; and

*PERMIT

2. That said LEASE covers lands in the County of _____,

State of _____, described as follows, to wit:

Township _____, Range _____, _____ Meridian

(Describe in conformity with requirements of
Section 7(a) of Act of August 13, 1954
(68 Stat. 708; see 43 CFR 186.8))

DATED _____

*PERMITTEE
LESSEE

*Use appropriate term

NOTE: Append proper acknowledgment for individual or for officer
or other authorized representative of corporation, in
compliance with the laws of the state where the lands are
situated.

REQUEST FOR PUBLICATION OF NOTICE OF
APPLICATION, OFFER, PERMIT, OR LEASE PURSUANT
TO SECTION 7 OF THE ACT OF AUGUST 13, 1954 (68 Stat. 708)

1/ TO THE MANAGER OF THE LAND OFFICE
OF THE BUREAU OF LAND MANAGEMENT
DEPARTMENT OF THE INTERIOR

(City and State)

Pursuant to the provisions of Section 7 of the Act of August
13, 1954 (68 Stat. 708) and to the applicable regulations thereunder
(43 CFR 186.5), the undersigned _____

(Name)

whose address is _____

*APPLICANT)		*APPLICATION
OFFEROR) in		OFFER
being the	the	hereinafter described,
PERMITTEE) under		PERMIT
LESSEE)		LEASE
		*APPLICATION
		OFFER
hereby requests that notice of such		be published as
		PERMIT
		LEASE

provided in Section 7 of said Act and said applicable regulations thereunder.

#1. On _____ the undersigned filed in the Land Office
(Date)

of the Bureau of Land Management, Department of the Interior, at

	*APPLICATION	
_____	an OFFER	for _____
(Place)		(Kind)

*PROSPECTING PERMIT
LEASE under and pursuant to the mineral leasing laws as
defined in Section 11 of the Act of August 13, 1954 (68 Stat. 708) (desig-
nated in said Land Office as Serial _____).

#1. On _____ there was issued by the United States
(Date)

of America under and pursuant to the mineral leasing laws as defined in
Section 11 of the Act of August 13, 1954 (68 Stat. 708) ^{*a} an

1/ In this connection, the Land Office for North Dakota and for South
Dakota is located at Billings, Montana; that for Nebraska and Kansas at
Cheyenne, Wyoming; and for Oklahoma, at Santa Fe, New Mexico

Where there is no land office for the state in which the lands are
located, requests should be filed with the Director of the Bureau of Land
Management, Department of the Interior, Washington 25, D. C.

*PROSPECTING PERMIT
LEASE to

*PERMITEE
as LESSEE

(Name of Original Permittee or Lessee)

*PERMITTEE *PERMIT
LESSEE under said LEASE

The undersigned is the present bearing Serial _____ as to the lands described in Section 2 of this Request, as shown by the records of the Bureau of Land Management, Department of the Interior.

*APPLICATION
OFFER

2. Said covers lands in the County of _____,
PERMIT
LEASE

State of _____, described as follows, to-wit:

Township _____, Range _____, _____ Meridian

(Describe in conformity with requirements of Section
7(a) of Act of August 13, 1954 (68 Stat. 708; see
43 CFR 186.8))

3. The undersigned has heretofore complied with the requirements of Section 7(a) of said Act of August 13, 1954, and of 43 CFR Section 186.8 regarding the filing for record, not less than ninety (90) days prior to the filing of this Request for Publication of notice, of the

*filing of said Application/Offer
issuance of said Prospecting Permit/Lease.

In compliance with Section 7(a) of said Act of August 13, 1954, and 43 CFR Section 186.9, there is enclosed herewith a certified copy of said recorded notice, together with an affidavit(s) of examination of the lands involved and a certificate based upon examination of the instruments of record affecting the lands involved.

4. The undersigned agree(s) to pay the entire cost of the publication herein requested in such newspaper as you may designate as the medium for such publication, and the undersigned agree(s) prior to commencement of such publication, upon receipt from you of the name and address of

the newspaper so designated, to furnish the agreement of the publisher of such newspaper to hold the undersigned alone responsible for the charges of publication.

DATED _____

*APPLICANT
OFFEROR
PERMITEE
LESSEE

*Use Appropriate Term

*Use Appropriate Paragraph No. 1

CERTIFICATE

THE UNDERSIGNED HEREBY CERTIFIES That:

	*It		*Title Company
#1.	He	is a duly qualified and licensed	Abstract Company
	She		Title Abstractor

*He
#1. She is an attorney admitted to practice law in one or more of the states in the United States of America.

*It
2. He has examined the instruments affecting the herein-
She

after described lands, of record in the public records of the county in which the lands are situate as shown by the indices of the public records in the county office of record for said county; the lands hereinabove referred to being situate in the County of _____, State of _____, and described as follows:

(Describe as described in the Request for Publication, in conformity with requirements of Section 7(a) of Act of August 13, 1954 (68 Stat. 708; see. 43 CFR 186.8)).

3. Based upon the undersigned's said examination of said instruments, there is set forth below the name of each person** disclosed by said instruments to have an interest in said lands under any unpatented mining claim located prior to the enactment of the Act of August 13, 1954 (68 Stat. 708), together with the address of such person if disclosed by such instruments of record:

Name of Person

Address
(If so disclosed)
(If not so disclosed -
write "Not Disclosed")

IN WITNESS WHEREOF, this Certificate is executed this _____ day of _____, 19____.

(If Corporation)

(Corporate Name)

By

(Designate below signature office
of person signing for corporation)

Address

(If Individual)

(Name)

Address

*Use appropriate term.

#Use appropriate Paragraph No. 1

NOTE: Affix corporate seal if
corporation executes.

** If none, write "None."

*APPLICATION
OFFER
NOTICE OF PERMIT
LEASE

Published pursuant to Section 7 of Act of August 13, 1954
(68 Stat. 708)

TO WHOMEVER IT MAY CONCERN:

NOTICE IS HEREBY GIVEN in pursuance of a proper Request
for Publication heretofore filed in accordance with Section 7 of
the Act of August 13, 1954 (68 Stat. 708) and the regulations
thereunder (43 CFR 186.7):

#1. #1. That on _____
(Date)

(Name of Applicant or Offeror)

whose address is _____

filed in the Land Office of the Bureau of Land Management,
Department of the Interior, at _____
(Place)

*APPLICATION
an OFFER for _____
(Kind) *PROSPECTING PERMIT
LEASE

under and pursuant to the mineral leasing laws as defined in
Section 11 of the Act of August 13, 1954 (68 Stat. 708)
(designated in said Land Office as Serial _____); and

#1. That on _____
(Date)

there was issued by the United States of America under and pur-
suant to the mineral leasing laws as defined in Section 11 of
the Act of August 13, 1954 (68 Stat. 708),

*a
an _____
(Kind) *PROSPECTING PERMIT
LEASE

*PERMITTEE

, as LESSEE

(Name of Original Permittee or Lessee)

and that

(Name)

whose address is

*PERMITTEE

*PERMIT

is the present LESSEE

under said

LEASE

as to the lands described in Section 2 of this Notice, bearing Serial No. _____, as shown by the records of the Bureau of Land Management, Department of the Interior; and

*APPLICATION

OFFER

2. That said PERMIT covers lands in the County of _____, LEASE

State of _____, described as follows, to-wit:

Township _____, Range _____, Meridian

(Describe in conformity with requirements of
Section 7(a) of Act of August 13, 1954 (68
Stat. 708; see 43 CFR 186.8))

3. That if any person claiming or asserting under, or by virtue of, any unpatented mining claim located prior to enactment of the Act of August 13, 1954 (68 Stat. 708), any right or interest in Leasing Act minerals (as defined in Section 11 of said Act of August 13, 1954) as to the above-described lands or any part thereof, shall fail to file in the Land Office of the Bureau of Land Management at _____, and within 150 days from the below-stated date of first publication of this Notice, a verified statement which shall set forth as to such mining claim:

- (1) The date of location;
- (2) The book and page of recordation of the notice or certificate of location;
- (3) The section or sections of the public land surveys which embrace such mining claim; or if such lands are unsurveyed either the section which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument;

- (4) Whether such claimant is a locator or purchaser under such location; and
- (5) The name and address of such claimant and names and addresses so far as known to the claimant of any other person or persons claiming any interest in or under such unpatented mining claim;

such failure shall be conclusively deemed (i) to constitute a waiver and relinquishment by such mining claimant of any and all right, title, and interest under such mining claim as to, but only as to, Leasing Act minerals, and (ii) to constitute a consent by such mining claimant that such mining claim and any patent issued therefor, shall be subject to the reservation of Leasing Act minerals specified in section 4 of said Act of August 13, 1954, and (iii) to preclude thereafter any assertion by such mining claimant of any right or title to or interest in any Leasing Act mineral by reason of such mining claim.

The date of first publication of this Notice shall be

_____, 195_____.

DATED _____

Manager,

Land Office
Bureau of Land Management
Department of the Interior

First Publication: _____
(Date)

* Use appropriate term

Use appropriate Paragraph No. 1

NOT TO BE FILLED IN
BY MINING CLAIMANT

:APPLICATION :
:OFFER :
:PROSPECTING PERMIT :
:LEASE :
:SERIAL No. :

VERIFIED STATEMENT OF MINING CLAIMANT

Pursuant to Section 7 of the Act of

August 13, 1954 (68 Stat. 708)

Pursuant to the provisions of section 7 of the Act of August 13, 1954 (68 Stat. 708) and to the applicable regulations thereunder (43 CFR 186.7; 186.15) the undersigned respectfully state(s) and represent(s):

1. Under and by virtue of the hereinafter mentioned mining claim(s) located prior to enactment of the Act of August 13, 1954 (68 Stat. 708) the undersigned

whose address is _____ claims rights in Leasing Act minerals as defined in said Act.

2. Said mining claim(s) is/are situate in the County of _____ State of _____, and are identified as follows:

Name of Mining Claim	Date of Location	Notice or Certificate of Location Recorded

Book _____ Page _____

#3. Said mining claim(s) is/are embraced in the following section(s) of the public land surveys, namely,

Township _____, Range _____, Meridian _____

Sections:

##3. Said Mining claim(s) will probably be embraced in the following section(s) when the public land surveys are extended to the lands covered by said mining claim(s), namely:

Township _____, Range _____, Meridian _____
Section(s): _____

4. The undersigned is a locator or purchaser under said mining claim(s) as follows, to-wit:

<u>Name of Claim</u>	<u>Claimant's Interest</u>
----------------------	----------------------------

(Insert opposite the name of each claim the word "locator" or the word "purchaser", to show the nature of the mining claimant's interest.)

5. The names and addresses, so far as known to the undersigned claimant, of any other person or persons claiming any interest or interests in or under the above-named unpatented mining claim(s) are as follows:

(Set forth name and address of each other claimant, so far as known to mining claimant filing above statement, and identify which of the above-named mining claim(s) each such other claimant is interested in.)

6. This verified statement of the undersigned mining claimant is being filed in accordance with the provisions of Section 7 of said Act and pursuant to a

"Notice of	"APPLICATION	published as to	"APPLICATION
	OFFER		OFFER
	PERMIT		PERMIT
	LEASE		LEASE

Serial _____ and within one hundred and fifty (150) days
(Number)

from the first publication of said Notice.

DATED: _____

Mining Claimant

VERIFIED STATEMENT
(Where mining claimant is an individual)

STATE OF _____)

: SS

COUNTY OF _____)

_____, being duly sworn, deposes and
(Name of Mining claimant)
says that (s)he is the mining claimant who executed the foregoing
Statement of Mining Claimant; that (s)he has read the said foregoing
statement and knows the contents thereof; and that the same is true
of his/her own knowledge.

Subscribed and sworn to before me this _____ day of
_____, 19____.

Notary Public residing at

My commission expires: _____

VERIFIED STATEMENT
(Where mining claimant is a corporation)

STATE OF _____)

: SS

COUNTY OF _____)

_____, being duly sworn, deposes
and says that (s)he is an officer, to-wit, _____, of _____
(Name of
_____, the corporation named in and whose name is sub-
corporation)

scribed to the foregoing Verified Statement of Mining Claimant, and
makes this verification for and on behalf of said corporation; that
(s)he has read the foregoing Verified Statement of Mining Claimant and
that the same is true of his/her own knowledge.

Notary Public in and for the
State of
County of

My commission expires: _____

* Use appropriate term

Use this paragraph 3 where public land surveys have been extended to the lands on which the mining claim(s) are situated.

Use this paragraph 3 where public land surveys have not been extended to the lands on which the mining claims are situated. OR as an alternate, give as to each mining claim a tie by courses and distances from the location or discovery monument or a specified corner of the mining claim, to an approved United States Mineral Monument identified by its official survey number:

REQUEST OF MINING CLAIMANT FOR COPY OF MOTION OF
APPLICATION, OFFER, PERMIT OR LEASE PURSUANT TO
THE ACT OF AUGUST 13, 1954 (68 Stat. 708), 43 CFR
186.20.

Pursuant to the provisions of section 7(d) of the Act of August 13, 1954 (68 Stat. 708) and to the applicable regulations thereunder (43 CFR 186.20), the undersigned hereby requests that a copy of any notice of any application, offer, permit or lease which may be published as provided in subsection (a) of section 7 of said act, affecting any of the land described herein, be served upon him, and in that connection respectfully state(s) and represent(s):

1. Under and by virtue of the hereinafter-mentioned mining claim(s) located prior to enactment of the Act of August 13, 1954 (68 Stat. 708) the undersigned _____,

(name)

whose address is _____,

claims rights in Leasing Act minerals as defined in said Act.

2. Said mining claim(s) is/are situate in the County of _____, State of _____, and are identified as follows:

Name of Mining Claim	Date of Location	Notice or Certificate of Location Recorded

Book

Page

3. Said mining claim(s) is/are embraced in the following section(s) of the public land surveys, namely,

Township _____, Range _____, Meridian _____
Sections:

or

4. Said mining claim(s) will probably be embraced in the following section(s) when the public land surveys are extended to the lands covered by said mining claim(s), namely:

Township _____, Range _____, Meridian _____

Section(s): _____

5. The undersigned is a locator or purchaser under said mining claim(s) as follows, to-wit:

Name of Claim

Claimant's Interest

(Insert opposite the name of each claim the word "locator" or the word "purchaser", to show the nature of the mining claimant's interest.)

6. The names and addresses, so far as known to the undersigned claimant, of any other person or persons claiming any interest or interests in or under the above-named unpatented mining claim(s) are as follows:

(Set forth names and address of each other claimant, so far as known to mining claimant filing above statement, and identify which of the above-named mining claim(s) each such other claimant is interested in.)

76876

**TITLE 43—PUBLIC LANDS:
INTERIOR**

**Chapter I—Bureau of Land Manage-
ment, Department of the Interior
(Circ. 1903)**

**PART 200—MINERAL DEPOSITS IN ACQUIRED
LANDS AND UNDER RIGHTS-OF-WAY**

**LEASING OF MINERAL DEPOSITS OTHER THAN
OIL, GAS, OIL SHALE, COAL, PHOSPHATE,
POTASSIUM, SODIUM, AND SULPHUR IN
CERTAIN ACQUIRED LANDS**

AUTHORITY: §§ 200.31 to 200.36 issued un-
der R. S. 161; 5 U. S. C. 22.

§ 200.31 *Authority.* (a) Section 402, Reorganization Plan No. 3 of 1946 (3 CFR, 1946 Supp., chapter IV) transferred the functions of the Secretary of Agriculture and the Department of Agriculture relative to the leasing or other disposal of minerals in certain acquired lands to the Secretary of the Interior. These functions have been delegated to the Bureau of Land Management and the Geological Survey, to be exercised in accordance with general policies approved by the Secretary (§ 4.261 (a), 12 F. R. 8677, and § 4.662, 11 F. R. 14165, 12 F. R. 839). By virtue of Departmental Order 2291 of January 27, 1947 (12 F. R. 839), the Bureau of Land Management and the Geological Survey also have similar functions with respect to the leasing of minerals, where authorized by law, in acquired lands under the jurisdiction of the bureaus and other agencies of the Department of the Interior, except Indian lands. To the extent that the Plan and Departmental Order authorizes the leasing of oil, gas, oil shale, coal, phosphate, potassium, sodium and sulphur, they have been superseded by the authority conferred upon the Secretary by the Mineral Leasing Act for Acquired Lands (61 Stat. 913; 30 U. S. C. 351-359) with respect to the enumerated minerals.

(b) Section 3 of the act of September 1, 1949 (Public Law 280, 81st Congress), authorized the issuance of mineral leases or permits for the exploration, development and utilization of minerals, other than those covered by the Mineral Leasing Act for Acquired Lands, in certain lands added to the Shasta National Forest by the act of March 19, 1948 (62 Stat. 83).

(Sec. 3, 63 Stat. 683; 30 U. S. C. 192c)

CROSS REFERENCE: For regulations under the Mineral Leasing Act for Acquired Lands, see §§ 200.1 through 200.10.

§ 200.32 *Scope.* (a) Except as to the minerals listed in § 200.31, §§ 200.31 through 200.36 apply to the leasing or other disposal of minerals.

(1) In acquired lands under the act of March 4, 1917 (39 Stat. 1134, 1150; 16 U. S. C. 520), Title II of the National Industrial Recovery Act of June 16, 1933 (48 Stat. 195, 200, 202, 205; 40 U. S. C. 401, 403 (a) and 408), the 1935 Emergency Relief Appropriation Act of April 8, 1935 (49 Stat. 115, 118), section 55 of Title I of the act of August 24, 1935 (49 Stat. 750, 781), the act of July 22, 1937 (50 Stat. 522, 525, 530), as amended July 28, 1942 (56 Stat. 725; 7 U. S. C. 1011 (c) and 1018),

(2) In acquired lands, except Indian lands, under the jurisdiction of the bureaus and other agencies of the Department of the Interior, and

(3) In those lands added to the Shasta National Forest by the act of March 19, 1948 (62 Stat. 83), which were acquired with funds of the United States, or lands received in exchange therefor.

(b) Leases or permits may be issued, or the minerals otherwise disposed of, only if the Bureau of Land Management is advised by the appropriate official of the Department, bureau, or agency, having jurisdiction over the lands, that development of such minerals will not interfere with the primary purpose for which the land was acquired, and any lease, permit or other instrument, granting the right to mine and remove the minerals will contain such stipulations as may be specified by that official in order to protect such purposes. If, however, there is any disagreement between any of the bureaus or agencies of the Department of the Interior as to leasing any land, or as to the terms or conditions of any proposed lease, the matter shall be submitted to the Secretary by the bureaus or agencies concerned.

(Sec. 3, 63 Stat. 683; 30 U. S. C. 192c)

§ 200.33 *Outstanding mineral permits and leases.* Permits and leases heretofore issued by the Department of Agriculture will continue to be administered by the Department of the Interior in accordance with the regulations under which they were issued.

§ 200.34 *Filing of applications for mineral permits or leases.* On and after February 3, 1955 applications for permits or leases shall be filed in the proper land office as set forth in § 200.8 (b) by any citizen of the United States or corporation organized and existing under the laws of the United States or any State thereof, or Territory thereof. 1/

(Sec. 10, 61 Stat. 915; 30 U. S. C. 359)

§ 200.35 *Terms and conditions of mineral permits and leases.* Prospecting and mining permits shall not exceed 20 years' duration and shall provide for an annual rental payable in advance of not less than 25 cents per acre and a royalty of not less than 2 percent of the value of the minerals after having been brought to the surface of the ground. After production begins, the yearly advance rental shall be credited on the royalty payments for that year. The permit may also require the posting of a bond in an amount to be determined by the Bureau of Land Management. Prospecting may, in the discretion of the appropriate official of the Department, bureau, or agency, having jurisdiction over the lands, be carried on without permit where no structures are to be erected and no substantial excavation or disturbances of the surface will be made. Mineral leases shall be subject to such terms and conditions as may be prescribed in each case by the Bureau of Land Management.

§ 200.36 *Payments and reports.* All payments of rentals and royalties on permits and leases shall be made to the Bureau of Land Management and all reports concerning operations shall be filed with the Director of the Geological Survey.

1/ Applications shall be filed in the Land Office for the State in which the land is situated or for the land or deposits in States for which there are no Land Offices, with the Bureau of Land Management, Washington 25, D.C., except that applications for land in North or South Dakota must be filed in the Land Office at Billings, Montana; and land in Nebraska or Kansas in the Land Office at Cheyenne, Wyoming; and for land in Oklahoma and Texas in the Land Office at Santa Fe, New Mexico.

REPRINT MARCH 15, 1955
of Secs. 200.31-200.36
Title 43 C.F.R.

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1904]

PART 192—OIL AND GAS LEASES MISCELLANEOUS AMENDMENTS

Replaced by Circular No. 1927. (11/58) CRR
CFR

1. Section 192.43 is amended to read as follows:

§ 192.43 *Availability of lands to further lease offers where noncompetitive lease is cancelled, relinquished or terminated.* (a) Where the lands embraced

in a relinquished or cancelled noncompetitive lease are not on the known geologic structure of a producing oil and gas field, and are not withdrawn from leasing, such lands become available for, and subject to, filings of new lease offers immediately upon the notation of the cancellation or relinquishment on the tract book, or, for acquired lands, on the official records relating thereto, of the appropriate land office. See § 192.120 (f) and (g) for the availability for new filings of lands in a lease for which an application for extension has or has not been timely filed; also, see § 192.161 (a) for the availability for new filings of lands in a lease subject to the automatic termination provisions of the act of July 29, 1954 (68 Stat. 583; 30 U. S. C. 188), for lessee's failure timely to pay the lease rental.

(b) Offers to lease which are received in the same mail or over the counter at the same time, will be considered as having been filed simultaneously, and priority to the extent of the conflicts between them will be determined by a public drawing in accordance with the provisions of § 295.8 of this chapter.

2. Section 192.120 is amended by adding two new paragraphs (f) and (g) thereto, and by changing the caption to read as follows:

§ 192.120 *Single extension of a noncompetitive lease; segregation of leased lands; notation of records.* * * *

(f) The timely filing of an application for extension shall have the effect of segregating the leased lands until the final action taken on the application is noted on the tract book, or, for acquired lands, on the official records relating thereto, of the appropriate land office. Prior to such notation, the lands are not available to the filing of offers to lease. Offers to lease filed prior to such notation will confer no rights in the offeror and will be rejected.

(g) Upon failure of the lessee or the other persons enumerated in paragraph (a) of this section to file an application for extension within the specified period, the lease will expire at the expiration of its primary term without notice to the lessee. The lands will thereupon become subject to new filings of offers to lease.

3. Section 192.161 is amended to read as follows:

§ 192.161 *Cancellation and termination of lease.* (a) Any lease issued after July 29, 1954, or any lease which is extended after that date pursuant to § 192.120, on which there is no well capable of producing oil or gas in paying quantities shall automatically terminate by operation of law if the lessee fails to pay the rental on or before the anniversary date of such lease. However, if the time for payment falls upon any day in which the proper office to receive payment is not open, payment received on the next official working day shall be deemed to be timely. The termination of the lease for failure to pay the rental must be noted on the tract book, or, for acquired lands, on the official records

relating thereto, of the appropriate land office. Until such notation is made, the lands included in such lease are not subject to, nor available for, leasing. Offers to lease filed prior to such notation will confer no rights in the offeror and will be rejected.

(b) Whenever the lessee fails otherwise to comply with any of the provisions of the act, of the regulations issued thereunder, or of the lease, such lease may be cancelled by the Secretary of the Interior if not known to contain valuable deposits of oil or gas after notice to lessee in accordance with section 31 of the act, if default continues for the period prescribed in that section after service of notice thereof. Any lessee of a lease which issued prior to July 29, 1954, may, at any time prior to the anniversary date of such lease and the accrual of rental, elect to subject his lease to the automatic termination provisions of this section by notifying, in writing, the manager of the appropriate land office to that effect.

(c) Leases known to contain valuable deposits of oil or gas may be cancelled only by judicial proceedings in the manner provided in sections 27 and 31 of the act.

(Sec. 32, 41 Stat. 450; 30 U. S. C. 189)

DOUGLAS MCKAY,
Secretary of the Interior.

MARCH 17, 1955.

[F. R. Doc. 55-2397; Filed, Mar. 23, 1955;
3:47 a. m.]

Published in 20 F. R. March 24, 1955

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**TITLE 43—PUBLIC LANDS:
INTERIOR**

**Chapter I—Bureau of Land Manage-
ment, Department of the Interior**

[Circular 1905]

**PART 196—PHOSPHATE LEASES AND USE
PERMITS**

**SIZE OF LEASEHOLD AND LIMITATION OF
ACREAGE HOLDINGS**

Replaced by 2005

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Section 196.2 (b) is amended to read as follows:

§ 196.2 *Size of leasehold and limitation of acreage holdings.* * * *

(b) A lessee, upon a showing that the leased deposits extend into adjoining Federal lands may, upon application to be filed in the Land Office, be granted, subject to the acreage limitation under paragraph (a) of this section, a lease for additional acreage, if the Manager, after consultation with the Mining Supervisor, shall determine that the increased acreage will result in conservation of natural resources and will provide for the most economical and efficient recovery of a minable deposit without waste. In applying this paragraph, fringe acreage in an area not of interest to more than one operator, and lacking sufficient reserves of phosphate deposits to warrant independent development, may be leased noncompetitively without publication either by separate lease or by adding to an existing leasehold (within the aggregate limitation of 2,560 acres), subject to a bonus of not less than \$1.00 an acre, a minimum royalty, and such other terms and conditions as may be determined at the time the lease offer is made. If, however, the fringe acreage has sufficient reserves to warrant independent development, or, if, following appropriate inquiry of operators in the area and consultation with the Mining Supervisor, the Manager determines that there is competitive interest therein, the lands will be offered competitively under § 196.11.

(Sec. 32, 41 Stat. 450; 30 U. S. C. 189)

DOUGLAS MCKAY,
Secretary of the Interior.

APRIL 14, 1955.

[F. R. Doc. 55-3256; Filed, Apr. 20, 1955;
8:45 a. m.]

Published in 20 F. R. April 21, 1955

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**TITLE 43—PUBLIC LANDS:
INTERIOR**

**Chapter I—Bureau of Land Manage-
ment, Department of the Interior**

[Circular 1906]

**PART 200—MINERAL DEPOSITS IN ACQUIRED
LANDS AND UNDER RIGHTS-OF-WAY**

Paragraph (b) of § 200.7 is amended to read as follows:

§ 200.7 *Leases of future or fractional interests. * * **

(b) *Offers to lease and leases covering future interests in oil and gas deposits.* A noncompetitive lease for a whole or fractional future interest will be issued only to an offeror who owns all or substantially all of the present operating rights to the minerals in the lands in the offer as mineral fee owner, as lessee or as an operator holding such rights. There is no required form for an application or offer to lease such whole or fractional future interest. The application or offer therefor should, however, to the extent applicable, conform to and include the information required by §§ 200.3, 200.4, 200.5 and must be accompanied by a certified abstract of title containing record evidence of the creation of, and offeror's right to the claimed mineral interest. If the offeror acquired the operating rights under a lease or contract, the offer shall also be accompanied by three copies of such lease or contract. In lieu of an abstract, a certificate of title may be furnished. A future interest offer may include tracts in which the United States owns a fractional present interest as well as the future interest for which a lease is sought, but it shall not include tracts where the United States owns the entire mineral interest at the time the offer is made. Future interest leases will become effective on the date when the United States becomes vested with the mineral rights as stated in the lease. Where the effective dates of the vesting of the Government's title to the minerals are different for different tracts, separate leases covering each of such different tracts will be issued.

(Sec. 10, 61 Stat. 915; 30 U. S. C. 359)

DOUGLAS MCKAY,
Secretary of the Interior.

APRIL 15, 1955.

[F. R. Doc. 55-3294; Filed, Apr. 21, 1955;
8:46 a. m.]

Published in 20 F. R. April 22, 1955

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THE SECRETARY OF THE
TREASURY
WASHINGTON, D. C.
JANUARY 1, 1913

TO THE HONORABLE
COMMISSIONER OF THE
INTERNAL REVENUE
WASHINGTON, D. C.

Dear Sir:

I have the honor to acknowledge the receipt of your letter of the 28th inst. in relation to the proposed amendment to the Regulations governing the collection of the tax on the sale of certain goods.

The proposed amendment is as follows:

"The tax on the sale of certain goods shall be levied on the gross price of such goods, exclusive of the cost of the materials and the cost of the labor, and shall be payable by the seller of such goods."

I am, Sir, very respectfully,
Yours very truly,
J. M. Smith

Very truly,
J. M. Smith
Secretary of the Treasury

Published in 1913, April 15, 1913

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**TITLE 43—PUBLIC LANDS:
INTERIOR**

**Chapter I—Bureau of Land Management,
Department of the Interior**

[Circular 1907]

PART 192—OIL AND GAS LEASES

**ROYALTY INTERESTS AND ASSIGNMENTS
THEREOF**

RECEIVED

Bureau of Land Management

MAY 23 1955

1245 North 29th Street
Billings, Montana

BUREAU OF LAND MANAGEMENT
LAND OFFICE

Billings, Montana

MAY 23 1955

Section 192.145 is amended to read:

§ 192.145 *Royalty interests in oil and gas leases and assignments thereof.*

Royalty interests in oil and gas leases constitute holdings or control of lands and deposits within the meaning of section 27 of the act. In order that the holdings of the assignee may be verified, all assignments of royalty interests must be filed for record purposes but no formal approval will be given. Any such assignment will be deemed to be valid provided it is accompanied by a statement over the assignee's signature that he is a citizen of the United States and that his interests in oil and gas leases do not exceed the acreage limitation as provided in § 192.3 and by the statement as to over-riding royalties required by § 192.83. If any portion of this statement is found to be false the assignment shall be invalid.

(Sec. 32, 41 Stat. 450; 30 U. S. C. 189)

DOUGLAS McKAY,
Secretary of the Interior.

MAY 2, 1955.

[F. R. Doc. 55-3686; Filed, May 5, 1955;
8:48 a. m.]

*Replaced
by Circular No. 1927
(11/58)*

Published in 20 F. R. May 6, 1955

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**TITLE 43—PUBLIC LANDS:
INTERIOR**

**Chapter I—Bureau of Land Manage-
ment, Department of the Interior**

Subchapter A—Alaska
[Circ. 1908]

PART 80—TOWNSITES
RIGHTS OF WAY

A new section to Part 80 is added as follows:

§ 80.14b *Rights of way.* Notwithstanding any other provisions of this part, the trustee is authorized to grant rights of way for public purposes across any unentered lands within the townsite. This authority is expressly limited to grants of rights of way to the townsite itself, or to the city after its incorporation.

(Sec. 11, 26 Stat. 1099; 48 U. S. C. 355)

DOUGLAS MCKAY,
Secretary of the Interior.

MAY 3, 1955.

[F. R. Doc. 55-3739; Filed, May 9, 1955;
8:45 a. m.]

Published in 20 F.R. May 10, 1955

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Repl. by C-2050

**TITLE 43—PUBLIC LANDS:
INTERIOR**

**Chapter I—Bureau of Land Manage-
ment, Department of the Interior**

[Circular No. 1909]

**PART 194—POTASSIUM PERMITS AND
LEASES**

This part supersedes the regulations approved December 2, 1954, by the Secretary of the Interior, and is effective 30 days after approval hereof.

GENERAL

- Sec.
194.1 Statutory authority.
194.2 Definitions.
194.3 Area and limitation on holdings.
194.4 Qualifications of applicant.
194.5 Completion of pending applications and prior claims.
194.6 Permits and leases for lands disposed of with reservation of potassium.
194.7 Requirements when lands are within a withdrawal.

POTASSIUM PROSPECTING PERMITS

- 194.8 Application for permit.
194.9 Rights conferred.
194.10 Permit bond.
194.11 Extension of permits.
194.12 Cancelled permits.
194.13 Reward for discovery.

POTASSIUM LEASES

- 194.14 Form of lease.
194.15 Lease bond.
194.16 Minimum production.
194.17 Application for lease.
194.18 Notice of lease offer.
194.19 Bid deposits.
194.20 Award of lease.
194.21 Readjustment of terms and conditions at end of twenty-year periods.
194.22 Relinquishment of lease.
194.23 Cancellation of lease.

TRANSFER OF PERMITS AND LEASES

- 194.24 Transfers, including subleases.
194.25 Overriding royalties.

AUTHORITY: §§ 194.1 to 194.25 issued under sec. 32, 41 Stat. 450; 30 U. S. C. 189. Interpret or apply secs. 1-7, 44 Stat. 1057, 1058, as amended, 47 Stat. 151, 60 Stat. 957, 62 Stat. 292; 30 U. S. C. 281-287.

GENERAL

§ 194.1 *Statutory authority.* (a) Sections 1 to 7 of the act of February 7, 1927, as amended (44 Stat. 1057, 30 U. S. C. secs. 281-287), authorize the Secretary of the Interior to:

(1) Issue permits to prospect for chlorides, sulphates, carbonates, borates, silicates, or nitrates of potassium in public lands or in public lands disposed of with a reservation of such deposits to the United States.

(2) Lease such lands containing valuable deposits of such substances.

(b) As authorized in section 4 of the act, potassium leases may also provide for the development of sodium, magnesium, aluminum, or calcium deposits, in any of the forms described in said section, associated with the potassium deposits.

§ 194.2 *Definitions.* The following terms, as used in this part or in any lease or permit approved under the regulations in this part, shall have the meanings here given:

(a) *Secretary.* The Secretary of the Interior or any person duly authorized to exercise the powers vested in that officer.

(b) *Director.* The Director of the Bureau of Land Management or any person duly authorized to exercise the powers vested in that officer.

(c) *Land Office, or appropriate land office.* The land office of the Bureau of Land Management for the State or Territory in which the lands covered by a permit, lease, or application therefor, are situated; and for States in which there are no land offices, the Bureau of Land Management, Washington 25, D. C., except for North or South Dakota, the land office at Billings, Montana; for Nebraska or Kansas, the land office at Cheyenne, Wyoming; and for Oklahoma, the land office at Santa Fe, New Mexico.

(d) *Manager or Land Office Manager.* The Manager of the appropriate land office as defined in paragraph (c) of this section, and, as to the Washington, D. C., office, the Supervisor, Eastern States Office, Bureau of Land Management.

(e) *Mining Supervisor.* The Regional Mining Supervisor of the Geological Survey for the region in which the lands under permit or lease are situated.

§ 194.3 *Area and limitation on holdings.* (a) Except where the rule of approximation applies, a lease or permit may not include over 2,560 acres in reasonably compact form entirely within a 6-mile square. No person, association, or corporation may hold, either directly or indirectly, in any one State, permits for an area that exceeds in the aggregate 51,200 acres; and, except as hereinafter

provided, leases for an area that exceeds in the aggregate 15,360 acres.

(b) Any person, association, or corporation holding acreage approximating 15,360 acres of Federal land in a single operating mining unit and refining development, upon a showing that the leased deposits extend into adjoining or adjacent Federal lands and that the lands containing such reserves are a necessary and normal part of the mining unit may file an application with the Manager to have such adjoining or adjacent Federal lands (including lands under lease, permit lands subject to lease, or unleased lands) designated as fringe acreage that will not be chargeable under paragraph (a) of this section to leasehold acreage holdings of the applicant. If the Manager shall determine, after consultation with the Mining Supervisor, that the application meets the above requirements and that such designation will result in conservation of natural resources and will provide for economical and efficient recovery as a part of the mining unit, he may designate specific tracts by legal subdivisions not to exceed 2,560 acres in all as nonchargeable to the applicant under paragraph (a) of this section. The intent of this provision is that fringe area deposits not to exceed 2,560 acres may be held without acreage charge upon acquisition of mining rights therein by the applicant. A designation of fringe acreage under this section shall not constitute a determination that the deposits therein shall be mined only by the applicant.

(c) The Manager, after consultation with the Mining Supervisor, may permit a lessee holding an active mining unit to hold leases for additional acreage not to exceed 10,240 acres in all as a separate mining unit when such permission is found to be in the public interest and will encourage prospecting for additional reserves. Such permission may be conditioned upon a requirement for construction of additional refining facilities.

§ 194.4 *Qualifications of applicant.*

(a) As used in this section, "applicant" means an applicant for a permit under

Published in 20 F. R. May 12, 1955

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§ 194.8, for a lease under § 194.13, for a noncompetitive lease under § 194.17, the successful bidder to whom a lease is awarded under § 194.20, or an assignee or transferee under § 194.24.

(b) Permits and leases may be issued to citizens of the United States, association of citizens, and corporations organized under the laws of the United States or of any State or Territory thereof.

(c) All applicants must file with the Manager statements and evidence as follows (unless previously filed, in which event a reference by serial number to the record and the land office in which filed, together with a statement as to any amendments, will be accepted):

(1) As to citizenship, whether native born or naturalized.

(2) If applicant is an association (including a partnership), it must submit a certified copy of the articles of association and the same showing as to the citizenship and holdings of its members as required of an individual.

(3) A corporation must submit a statement showing:

(i) The State in which it is incorporated.

(ii) That it is authorized to hold leases for potassium deposits and that the person executing an instrument on behalf of the corporation is authorized to act in such matters.

(iii) The percentage of voting stock and of all the stock owned by aliens for those having addresses outside of the United States. When the stock owned by aliens is over 10 percent, additional information may be required.

(iv) The name, address, citizenship, and acreage holdings of any stockholder owning or controlling 20 percent or more of the stock of any class, of the corporation.

(4) That holdings do not exceed the acreage limitations specified in § 194.3.

§ 194.5 *Completion of pending applications and prior claims.* (a) Section 6 of the act of February 7, 1927, supra, which repealed the act of October 2, 1917 (40 Stat. 297), excepts valid claims existing at the passage of the act and thereafter maintained in compliance with the law under which initiated, which claims may be perfected under such law, including discovery.

(b) As to potassium mining claims, only those claims may be patented which were initiated prior to and were valid existing claims on October 2, 1917, and have since been duly maintained as such.

§ 194.6 *Permits and leases for lands disposed of with reservation of potassium.* Where lands included in a permit or lease have been disposed of with reservation of potassium deposits, a permittee or lessee must make full compliance with the law under which such reservation was made. See the acts of July 17, 1914 (38 Stat. 509; 30 U. S. C. 121-123); December 29, 1916 (39 Stat. 862; 43 U. S. C. 291-301); June 17, 1949 (63 Stat. 201); June 21, 1949 (63 Stat. 215; 30 U. S. C. 54), and August 13, 1954 (68 Stat. 708), and other laws authorizing such reservations.

NOTE: As provided in paragraph 3 of notice of October 16, 1951, 16 F. R. 10869, potash permits and leases including renewals for "Potash Area lands" within Eddy and Lea Counties, New Mexico, shall contain special requirements for the protection of oil and gas deposits.

§ 194.7 *Requirements when lands are within a withdrawal.* Where any part of the lands embraced in an application for potassium permit or lease is within a withdrawal which does not preclude disposition of the potassium deposits, the head of the Government agency having control will be called upon for a report as to whether there is any objection to the granting of a potassium permit or lease. Where he recommends that a special stipulation be required to protect the interests of the United States, an appropriate stipulation may be included in the lease or permit.

POTASSIUM PROSPECTING PERMITS

§ 194.8 *Application for permit.* An application for a permit must be filed in duplicate in the appropriate land office. A filing fee of \$10, which will be retained as a service charge in any event, must accompany the application. No specific form of application is required, but the application should include the information and evidence called for in §§ 194.4 and 194.17 (a) (1) and (2).

§ 194.9 *Rights conferred.* Two-year permits issued on Form 4-128¹ grant the permittee the exclusive right to prospect and explore the lands described therein to determine the existence of, or workability of, the potassium deposits. Only such material may be removed from the land as is necessary to experimental work or the demonstration of the existence of such deposits in commercial quantities.

§ 194.10 *Permit bond.* Prior to the issuance of a permit for lands entered or patented with a reservation of the potassium deposits to the United States, or lands within a reclamation project, the applicant must furnish an approved corporate surety bond of at least \$1,000 (Form 4-1130) or a personal bond in similar amount (Form 4-1131) secured by negotiable Federal securities in the amount of the bond. The right is reserved to require the applicant, in any case where deemed necessary, to furnish a permit bond.

§ 194.11 *Extension of permits.* Potassium permits may be extended for a single period of two years if the permittee has drilled at least one adequate test well on the permit area or performed other comparable prospecting prescribed in the permit during the two-year period for which the permit was issued. This requirement may be waived, in the discretion of the Secretary, upon a satisfactory showing that the failure of permittee was directly attributable to the shortage of equipment or labor essential

to the prescribed prospecting. The showing should consist of copies of timely correspondence or other evidence demonstrating the unsuccessful efforts to obtain the material or labor. The application for extension must be filed in duplicate in the appropriate land office within the period beginning 90 days prior to the date of expiration of the permit. Upon failure of permittee to file such an application within the specified period, the permit will expire without notice to the permittee, and the lands will be subject to new applications for potassium permits.

§ 194.12 *Cancelled permits.* Upon cancellation of a potassium permit for any reason, the land will not be open to potassium permit applications until the cancellation is noted on the records of the land office.

§ 194.13 *Reward for discovery.* (a) A permittee who discovers valuable potassium deposits in the land before the permit expires is entitled to a preference right lease of all or part of the lands in the permit, in a reasonably compact form as provided in § 194.3. An application for a preference right lease must be filed in the appropriate land office not later than 30 days after the permit expires. The application must describe the lands desired, show any change in the information contained in the application for permit, specify fully the extent and mode of occurrence of the deposits as disclosed by the prospecting work, and show that valuable potassium deposits were discovered before the permit expired. The application must be accompanied by the first year's lease rental at the rate of 25 cents per acre or fraction thereof. The lease will be on Form 4-126 and will be dated the first day of the month following the date of the decision notifying the applicant that he is entitled to a preference right lease, unless otherwise specified therein. If the permit expires and the application for lease is finally rejected, royalty for the deposits mined will be charged at the permit rate and such mining will not constitute a trespass.

(b) If the lands are unsurveyed, the permittee, prior to the issuance of a lease, will be required to deposit with the appropriate State Supervisor the estimated cost of making a survey of the lands as officially determined by the Bureau of Land Management. This survey will be an extension of the public land surveys over the lands applied for, and the lands to be included in the lease will be conformed to the subdivision of such survey.

POTASSIUM LEASES

§ 194.14 *Form of Lease.* Leases shall be issued on Form 4-126.

§ 194.15 *Lease bond.* A compliance bond, in no event less than \$5,000, with approved corporate surety (Form 4-1113) or the lessee's personal bond (Form 4-1114), will be required prior to the issuance of a lease. Personal bonds must be secured by negotiable Federal securities in the amount of the bond.

§ 194.16 *Minimum production.* Leases will require the payment of a

¹ A copy of this, as well as of every other form mentioned in this Part, may be obtained from any land office or from the Director, Bureau of Land Management, Washington 25, D. C. Copies of Forms 4-126 and 4-128 were filed with the Federal Register Division as part of the original document.

royalty on a minimum annual production beginning with the sixth full calendar lease year, unless operations are interrupted by strikes, the elements, or casualties not attributable to the lessee, or unless, on application and showing made, lease operations are suspended by the Department of the Interior for the reasons specified in section 39 of the Mineral Leasing Act² (30 U. S. C. 209).

§ 194.17 Application for lease.³ (a) An application for a lease must be filed in duplicate in the appropriate land office. A filing fee of \$10, which will be retained as a service charge in any event, must accompany the application. No specific form is required, but the application should include the following:

(1) The applicant's name and address.

(2) If the requested lands are surveyed, they should be described by legal subdivisions, showing meridian, State, township, range, and section; if not surveyed, by metes and bounds connected by courses and distance with some corner of the public land survey. When possible, the approximate legal subdivision of unsurveyed lands should be stated.

(3) Evidence that the land is valuable for its potassium content, with a statement as to the character, extent and mode of occurrence of the potassium deposits.

(b) The application must be signed by applicant, or by his attorney-in-fact supported by the power of attorney.

(c) If it be found that the area applied for is not available for leasing, the applicant will be so informed.

(d) Lands determined to be available for leasing may be offered competitively in the manner specified in § 194.18 except that if the Manager, after consulting with the Mining Supervisor, determines that the potassium deposits in the lands applied for extend into an active mining unit held by the applicant, are a normal part of such mining unit, are lacking in sufficient reserves to warrant independent development as a single mining unit, and are not of competitive interest to holders of other active mining units in the area, he may, in the interest of conservation of natural resources, grant to such applicant a lease to mine and remove such adjoining deposits without competitive bidding. A non-competitive lease granted under this subsection shall provide for a royalty on production equal to the highest rate of royalty in any Federal lease in the applicant's adjoining mining unit but not less than 5 percent of the gross value thereof at the point of shipment to market, and, at the option of the applicant to be exercised at the time of filing of his application, either a cash bonus of \$15.00 per acre or fraction thereof or a production payment of one cent per mine run ton in addition to the royalty specified in the lease. Acreage bonuses must

be paid at the time of filing of application. Production payments will be made in the manner prescribed in section 2 (c) of lease Form 4-126.

§ 194.18 Notice of lease offer. The advertised notice of the lease offer will state the place and time of sale, whether the sale will be at public auction or by sealed bids, the description of the land and the place where a detailed statement of the terms and conditions of the lease offer may be obtained. This notice will be published at Government expense, once a week for four consecutive weeks or for such other period as may be determined, in a newspaper of general circulation in the county in which the lands or deposits are situated. A copy of the advertised notice will be posted in the appropriate land office during the period of publication. The detailed statement will set forth the terms and conditions of the sale, including rental, royalty, and minimum production, the manner in which bids may be submitted, and a statement that the Government reserves the right to reject any and all bids. The commission of any act of intimidation of bidders, or the combination of bidders to hinder or prevent bidding, is unlawful. See 18 U. S. C. 1860.

§ 194.19 Bid deposits. The successful bidder at a sale by public auction must deposit with the Manager of the Land Office, or the officer conducting the sale, on the day of the sale, and each bidder at a sale by sealed bids must submit with his bid, certified check, cashier's check, bank draft, money order or cash for one-fifth of the amount of the bid.

§ 194.20 Award of lease. Upon receipt of the high bid at, and at the close of, an oral auction, or the opening of the sealed bids, the Manager, subject to his right to reject any and all bids, will award the lease to the successful bidder, who will be notified accordingly. Four copies of the lease will be sent to the successful bidder, who will be required to execute them within 30 days from receipt thereof, pay the balance of the bonus bid, the first year's rental, file a bond as required by § 194.15, and furnish evidence of qualifications as required by § 194.4. If a bidder, after being awarded a lease, fails to execute it or otherwise comply with the applicable regulations, his deposit will be forfeited and disposed of as other receipts under the Mineral Leasing Act.

§ 194.21 Readjustment of terms and conditions at end of twenty-year periods. The terms and conditions of a lease are subject to reasonable readjustment at the end of each twenty-year period succeeding the date of the lease, unless otherwise provided by law at the time of the expiration of such periods. The lessee will be notified of the proposed readjustment of terms or that no readjustment is to be made. The effective date of readjustment shall be the end of the respective twenty-year period or the first of the month following receipt by the lessee of notice of readjustment, whichever is the later. Unless the lessee files objection to the proposed terms, or

a relinquishment of the lease within 30 days after receipt of the notice, he will be deemed to have agreed to such terms.

§ 194.22 Relinquishment of lease. Upon a satisfactory showing that the public interest will not be impaired, the lessee may surrender the entire lease or any legal subdivision thereof. A relinquishment must be filed in duplicate in the appropriate land office. Upon its acceptance it shall be effective as of the date it is filed, subject to the continued obligation of the lessee and his surety to make payment of all accrued rentals and royalties and to provide for the preservation of any mines or productive works or permanent improvements on the leased lands in accordance with the regulations and terms of the lease.

§ 194.23 Cancellation of lease. If the lessee fails to comply with the general regulations in force at the date of the lease, or at the effective date of any readjustment of the terms and conditions thereof under section 194.21, or defaults with respect to any of the terms, covenants, or stipulations of the lease, and such failure or default continues for 30 days after service of written notice thereof by the lessor, then the lessor may bring appropriate court proceedings to forfeit and cancel the lease as provided in section 31 of the Mineral Leasing Act (30 U. S. C. 188). A waiver of any particular cause of forfeiture shall not prevent the cancellation and forfeiture of the lease for any other cause, or for the same cause occurring at any other time.

TRANSFERS OF PERMITS AND LEASES

§ 194.24 Transfers, including subleases. (a) Permits and leases may be transferred in whole or in part. The approval of a transfer of part of the lands in a permit or lease will create a new permit or lease for the transferred portion. A discovery made before or after the partial assignment, either on the retained or the assigned portions will not inure to the benefit of the other, nor will approval of a transfer extend the life of the permit or the readjustment periods of the lease. Transfers, whether by direct assignments, operating agreements, subleases, working or royalty interests, or otherwise, must be filed for approval in duplicate at the land office within 90 days after execution. Evidence of the qualifications of the assignee or transferee to hold the permit or lease, as required by § 194.4 must be submitted simultaneously. Before a transfer of a permit or lease will be approved, the consent of the surety to the substitution of the transferee as principal, or a new bond with the transferee as principal, must be submitted if the original permit or lease required the maintenance of a bond. If the transfer is for part of the land only, it must be for a legal subdivision and (1) the consent of the surety to the transfer and its agreement to remain bound as to the interest retained by the permittee or lessee must be submitted, as well as (2) a new bond with the transferee as principal covering the portion of the lands transferred. The account under the permit or lease must be in good standing before approval of transfer will be given. A

² See showing required under § 191.26 of this chapter, as amended.

³ Potash lands and deposits in or adjacent to Searles Lake, California, are subject only to lease by competitive bidding, except as to potash mining rights included in sodium permits and leases issued under Part 195 of this chapter.

transfer will take effect the first day of the month following its approval, or if the transferee requests, the first day of the month of the approval.

(b) An application for approval of any instrument transferring a lease or permit, or interest therein, must be accompanied by a service fee of \$10. An application not accompanied by such a fee will not be accepted. The fee will not be returned even though the application is later withdrawn or rejected.

§ 194.25 *Overriding royalties.* (a) An overriding royalty interest may be created by assignment or otherwise: *Provided, however,* That if the total of the overriding royalty interest at any time exceeds one percent of the gross value of the output at the point of shipment to market, it shall be subject to reduction or suspension by the Secretary to a total of not less than one percent of such gross value, whenever, in the interest of conservation, it appears necessary to do so in order (1) to prevent premature abandonment, or (2) to make possible the economic mining of marginal or low grade deposits. Where there is more than one overriding royalty interest, any such suspension or reduction shall be applied to the respective interests in the manner agreed upon by the holders thereof or in the absence of such agreement, in the inverse order of the dates of creation of such interests.

(b) Any assignment, sublease, or other transfer or agreement which creates an overriding royalty interest, will not be approved unless the owner of that interest files his agreement in writing that such interest is subject to suspension or reduction as provided in paragraph (a) of this section. No overriding royalties shall be paid at a rate in excess of the rate to which they have been so reduced until otherwise authorized by the Secretary.

DOUGLAS MCKAY,
Secretary of the Interior.

MAY 6, 1955.

[F. R. Doc. 55-3830; Filed, May 11, 1955;
8:46 a. m.]

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter F—Color of Title and Riparian Claims [Circular No. 1910]

PART 141—COLOR OF TITLE AND RIPARIAN CLAIMS APPLICABLE TO PARTICULAR STATES

ERRONEOUSLY MEANDERED LANDS, WISCONSIN

Sections 141.19 to 141.24 are completely revised to read as follows:

Sec.

- 141.19 Statutory authority.
- 141.20 Qualifications of applicants
- 141.21 Applications.
- 141.22 Publication and protests.
- 141.23 Price of land; other conditions.

AUTHORITY: §§ 141.19 to 141.23 issued under R. S. 2478; 43 U. S. C. 1201.

§ 141.19 *Statutory authority.* The act of August 24, 1954 (68 Stat. 789) directs the Secretary of the Interior to issue patents for public lands which lie between the meander line of an inland lake or river in Wisconsin as originally surveyed and the meander line of that lake or river as subsequently resurveyed, under certain terms and conditions. The act of February 27, 1925 (43 Stat. 1013; 43 U. S. C. 994), authorized the Secretary of the Interior to sell such public lands under certain other terms and conditions. These acts are cited as "the act of 1954" and "the act of 1925," respectively, in §§ 141.20 to 141.23.

§ 141.20 *Qualifications of applicants.*

(a) To qualify under the act of 1954, a person, or his predecessors in interest, (1) must have been issued, prior to January 21, 1953, a patent for lands lying along the meander line as originally determined, and (2) must have held in good and in peaceful, adverse possession since the date of issuance of said patent adjoining public lands lying between the original meander line and the resurveyed meander line.

(b) To qualify under the act of 1925, a person must either (1) be the owner in good faith of land, acquired prior to February 27, 1925, shown by the official public land surveys to be bounded in whole or in part by such public lands or (2) be a citizen of the United States who, in good faith under color of title or claiming as a riparian owner, had, prior to February 27, 1925, placed valuable improvements upon or reduced to cultivation any of such public lands.

§ 141.21 *Applications.* (a) Claimants under the act of 1925 have a preferred right of application for a period of 90 days from the date of filing of the plat of survey of lands claimed by them. Applications for public lands under the act of 1954 must be filed within one year after August 24, 1954, or one year from the date of the official plat or resurvey,

whichever is later. All applications must be filed in duplicate with the Bureau of Land Management, Washington 25, D. C.

(b) Every application must be accompanied by a filing fee of \$10, which is not returnable.

(c) No particular form is required but the applications must be typewritten or in legible handwriting and must contain the following information:¹

(1) The name and post office address of the applicant.

(2) The legal description and acreage of the public lands claimed or desired.

(3) The legal description of the lands owned by the applicant, if any, adjoining the public lands claimed or desired. If the claim is based on ownership of such adjoining lands, the application must be accompanied by a certificate from the proper county official or by an abstractor, showing the date of acquisition of the lands by the applicant and that the applicant owns the lands in fee simple as of the date of application.

(4) If the applicant is a color-of-title applicant under the act of 1925, a statement whether or not the applicant is a citizen of the United States.

(5) If the application is based on color of title or riparian claim under the act of 1925, a statement fully disclosing the facts of the matter; or if the application is based on peaceful, adverse possession under the act of 1954, a similar statement showing peaceful, adverse possession by the applicant, or his predecessors in interest, since the issuance of the patent to the lands adjoining the claimed lands.

(6) A statement showing the improvements, if any, placed on the public lands applied for including their location, nature, present value, date of installation, and the names of the person or persons who installed them.

¹ Title 18, U. S. C., sec. 1001, makes it a crime for any person knowingly and willfully to make any false, fictitious, or fraudulent statements or representations to any department or agency as to any matter within its jurisdiction.

(7) A statement showing the cultivation, if any, of the lands applied for, including the nature, location, and dates of such cultivation.

(8) The names and post office addresses of any adverse claimants, settlers, or occupants of the public lands applied for or claimed.

(9) The names and post office addresses of at least two disinterested persons having knowledge of the facts relating to the applicant's claim.

(10) A citation of the act under which the application is made.

§ 141.22 *Publication and protests* (a) The applicant will be required to publish once a week for five consecutive weeks in accordance with § 106.18 of this chapter, at his expense, in a designated newspaper and in a designated form, a notice allowing all persons claiming the land adversely to file with the Bureau of Land Management, Washington 25, D. C., their objections to issuance of patent under the application. A protestant must serve on the applicant a copy of the objections and furnish evidence of such service.

(b) The applicant must file a statement of the publisher, accompanied by a copy of the notice published, showing that publication has been had for the required time.

§ 141.23 *Price of land; other conditions.* (a) Persons entitled to a patent under the act of 1954 must, within 30 days after request therefor, pay, under the same terms and conditions, the same price per acre as was paid for the land included in their original patent.

(b) Persons entitled to a patent under the act of 1925, within 30 days after request therefor, must pay the appraised price of the lands, which price will be the value of the lands as of the date of appraisal, exclusive of any increased value resulting from the development or improvement of the lands for agricultural purposes by the applicant or his predecessors in interest but inclusive of the stumpage value of any timber cut or removed by them.

The record keeping or reporting requirements of this regulation have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1952.

DOUGLAS MCKAY,
Secretary of the Interior.

MAY 17, 1955.

[F. R. Doc. 55-4178; Filed, May 23, 1955;
8:46 a. m.]

Published in 20 F. R. May 24, 1955

Copies to	Each AA	25
	Each SO	10
	Each LO	25
	Each DFO	5
	Each DGO	5
All Regional and Field Solicitors 1 ea.		

ESO	10
Wash. Staff Officers	5 each
Asso. Solicitor Parriott	30
Mrs. Mann GS Room 3219	20

**TITLE 43—PUBLIC LANDS:
INTERIOR**

**Chapter I—Bureau of Land Manage-
ment, Department of the Interior**

[Circ. 1911]

**PART 257—SALE OR LEASE OF SMALL
TRACTS, NOT EXCEEDING FIVE ACRES, FOR
RESIDENCE, RECREATION, BUSINESS, OR
COMMUNITY SITES**

APPLICATION; GENERAL PROCEDURE

Effective July 5, 1955, Part 257 is amended by adding a new paragraph (d) to § 257.6, to read as follows:

§ 257.6 *Application; general procedure.* * * *

(d) No application on Form 4-776 for small tracts will be accepted under the regulations in this part unless the applicant certifies that he has personally inspected the small tract described in his application or lands within one mile of that tract.

(52 Stat. 609, as amended; 43 U. S. C. 682a. Interprets or applies R. S. 2478; 43 U. S. C. 1201)

CLARENCE A. DAVIS,
Acting Secretary of the Interior.

JUNE 28, 1955.

[F. R. Doc. 55-5217; Filed, June 29, 1955;
10:04 a. m.]

Published in 20 F. R. June 30, 1955

Copies to Each AA 25
 Each SO 10
 Each LO 25
 Each DFO 5
 Each DGO 5
All Regional and Field Solicitors 1 ea.

ESO 10
Wash. Staff Officers 5 each
Asso. Solicitor Parriott 30
Miss Williams GS Room 3219 20

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1912]

PART 191—GENERAL REGULATIONS APPLICABLE TO MINERAL PERMITS, LEASES, AND LICENSES

PAYMENT OF RENTALS

Section 191.12 is amended to read as follows:

§ 191.12 *Payment of rentals.* (a) Unless otherwise directed by the Secretary, rentals and royalties under all leases and permits issued under the act shall be paid to the Manager of the land office in the State in which the lands are located or, if there is no land office in such State, to the Director, Bureau of Land Management, Washington 25, D. C., except that for lands in the following States, payments must be made in the land office named herein; North or South Dakota, the land office at Billings, Montana; Nebraska or Kansas, at Cheyenne, Wyoming; Oklahoma, at Santa Fe, New Mexico. All remittances to Bureau of Land Management offices shall be made payable to the Bureau of Land Management.

(b) All rentals and royalties on producing oil and gas leases, communitized leases in producing well units, unitized leases in producing unit areas, leases on which compensatory royalty is payable, and all payments under subsurface storage agreements and easements for directional drilling are to be paid to the Regional Oil and Gas Supervisor of the United States Geological Survey. Rentals and royalties on producing mining leases are to be paid to the Regional Mining Supervisor. All remittances to Survey offices shall be made payable to the United States Geological Survey.

(Sec. 32, 41 Stat. 450, sec. 1, 44 Stat. 301; 30 U. S. C. 189, 271)

CLARENCE A. DAVIS,
Acting Secretary of the Interior.

JUNE 28, 1955.

[F. R. Doc. 55-5326; Filed, July 1, 1955;
8:45 a. m.]

Published in 20 F. R. July 2, 1955

Copies to	Each AA	25	ESO	10
	Each SO	10	Wash. Staff Officers	5 each
	Each LO	25	Asso. Solicitor Parriott	30
	Each DFO	5	Miss Williams GS Room 3219	20
	Each DGO	5		
All Regional and Field Solicitors		1 ea.		

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Manage- ment, Department of the Interior

[Circular 1913]

PART 101—GENERAL REGULATIONS INVOLV- ING APPLICATIONS AND ENTRIES

SERVICE OF NOTICES; USE OF CERTIFIED MAIL

A new subheading and section are
added to Part 101 as follows:

SERVICE OF NOTICES

§ 101.19 *Use of certified mail.* Effec-
tive August 1, 1955, certified mail as out-
lined in 39 CFR Part 58 (20 F. R. 3438)
may be used in lieu of registered mail
in public land matters within the juris-
diction of the Department of the Inter-
ior where use of such registered mail was
required prior to August 1, 1955, by this
chapter, except notices of the initiation
of Government contests against mining
claims pursuant to Part 222 of this
chapter.

(R. S. 2428; 43 U. S. C. 1201)

DOUGLAS MCKAY,
Secretary of the Interior.

JULY 19, 1955.

[F. R. Doc. 55-6003; Filed, July 25, 1955;
8:45 a. m.]

Published in 20 F. R. July 26, 1955

Copies to	Each AA	25	BFO	10	
	Each SO	10	ESO	10	
	Each LO	25	Wash. Staff Officers		5 each
	Each DFO	5	Asso. Solicitor Parriott		30
	Each DGO	5	Miss Williams GS Room 3219		20
All Regional and Field Solicitors		1 ea.			

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

(Circular 1914)

PART 131—BOUNTY LAND WARRANTS

ASSIGNMENT AND USE OF BOUNTY LAND WARRANTS

- Sec.
- 131.1 Services for which warrants are issued.
- 131.2 Locating privilege restricted.
- 131.3 How warrants may be used.
- 131.4 Warrants received as the equivalent of money.
- 131.5 Use of warrant as equivalent of money does not excuse compliance with law.
- 131.6 Assignment prior to issuance of warrant not recognized.
- 131.7 Requirements governing assignments.
- 131.8 Requirements governing powers of attorney to sell or locate.
- 131.9 Blank assignments.
- 131.10 Attestation of powers of attorney to sell or locate.
- 131.11 Assignee not recognized as witness.
- 131.12 Acknowledgment of assignments and powers of attorney.
- 131.13 Assignments by unmarried females.
- 131.14 When copy of decree of court is required with assignments.
- 131.15 Two assignments by same party.
- 131.16 Erasure of name.
- 131.17 Assignment executed in a foreign country.
- 131.18 Assignment after minor warrantee has attained his majority.
- 131.19 Assignment executed and witnessed but not acknowledged.
- 131.20 Assignment by an Indian residing among whites.
- 131.21 Assignment by an Indian holding tribal relations.
- 131.22 Assignment for minor Indians.
- 131.23 Assignability of warrants.
- 131.24 Descent of title, to widow of warrantee.
- 131.25 Vesting of title on death of warrantee before issue of warrant.
- 131.26 Court certificate required when warrantee is deceased.
- 131.27 Assignment by widow, her heirs, or legal representatives.
- 131.28 Vesting of title on death of warrantee after issue of warrants, etc.
- 131.29 Requirements in connection with assignments by heirs.
- 131.30 Transcript of will required.
- 131.31 Assignment by administrator *de bonis non*, with will annexed.
- 131.32 Loss or destruction of warrant.
- 131.33 Reissued warrants.
- 131.34 Return of warrant, where location is canceled.
- 131.35 Substitution for objectionable warrant.

AUTHORITY: §§ 131.1 to 131.35 issued under R. S. 2478; 43 U. S. C. 1201.

CROSS REFERENCES: For general orders of withdrawal, see §§ 297.11 and 297.12 of this chapter. For land classifications, see Part 296 of this chapter.

§ 131.1 *Services for which warrants are issued.* Warrants for bounty lands were and are issued by the Administrator of Veterans' Affairs, for services in wars or battles prior to March 3, 1855, only. Applications for the issuance of warrants should be addressed to that official.

§ 131.2 *Locating privilege restricted.* Warrants can not now be "located" upon the public lands. The locating privilege was denied except in the State of Missouri after the passage of the act of March 2, 1889 (25 Stat. 854; 43 U. S. C. 700), and there are now no lands known to the Bureau of Land Management to be subject to warrant location in Missouri.

§ 131.3 *How warrants may be used.* A warrant for bounty lands may be used as cash in commuted homestead, desert land, and timber and stone entries, and for lands sold at public auction, except ceded Indian lands.

CROSS REFERENCES: For homesteads, generally, see Part 166, of this chapter. For ceded Indian lands, see Part 177 of this chapter. For desert-land entries, see Part 232 of this chapter. For public sales, see Part 250 of this chapter. For timber and stone entries, see Part 285 of this chapter.

§ 131.4 *Warrants received as the equivalent of money.* In the instances mentioned in § 131.3, warrants are received as the equivalent of money to the extent of their valuation at \$1.25 per acre, and it is not necessary to apply the warrant to a specific tract. For instance, a 40-acre warrant will be received as \$50 cash in payment or part payment of the money due.

§ 131.5 *Use of warrant as equivalent of money does not excuse compliance with law.* In order to use a warrant, as indicated in §§ 131.3 and 131.4, it is necessary for the party to make application under one of the four classes mentioned, and all residence upon and cultivation and improvement of the tract, which may be required by such law and the regulations thereunder, must be fully complied with.

§ 131.6 *Assignment prior to issuance of warrant not recognized.* No assignment of a warrant or power of attorney to sell or locate the same executed prior to the date of the issue thereof can be recognized by the Bureau of Land Management. (See R. S. 2436; 43 U. S. C. 322.) Assignments must be in writing. Delivery only constitutes no transfer.

§ 131.7 *Requirements governing assignments.* The assignment and acknowledgment are required to be indorsed as far as practicable upon the warrant. Should it be found necessary to write the entire assignment or a separate paper, which can only occur when prior assignments or acknowledgments have filled entirely the blank space on the warrant, it must be so attached as to show positively that the warrant assigned was

in the hands of the party making the transfer. In such cases the signature of the assignor must be affixed in the presence of the officer before whom it is acknowledged, who must certify that at the date of the assignment the warrant was presented by and in possession of the assignor. The assignments should describe the warrant by number, act, and acreage. Parties should avoid discrepancies in spelling and write their full Christian names and surnames.

§ 131.8 *Requirements governing powers of attorney to sell or locate.* The requirements in the foregoing section as to warrants must be observed in preparing acknowledgments of powers of attorney to sell or locate bounty-land warrants.

CROSS REFERENCE: For agents and attorneys, generally, see Part 1 of this title.

§ 131.9 *Blank assignments.* Blank assignments are void, and will not be recognized by the Bureau of Land Management. The name of an assignee should be written in the assignment before the warrant is sent to the district land office or Bureau of Land Management. Evidence that such assignee procured the warrant for value under the blank assignment may be required.

§ 131.10 *Attestation of powers of attorney to sell or locate.* Each assignment or power of attorney must be attested by two subscribing witnesses. The mark of a witness will not be recognized.

§ 131.11 *Assignee not recognized as witness.* A person to whom a warrant is transferred will not be recognized as a legal attesting witness to the assignment, nor as a proper officer to take the acknowledgment thereof.

§ 131.12 *Acknowledgment of assignments and powers of attorney.* (a) The execution of assignments is required to be acknowledged by the assignor in the presence of a manager of a land office, a judge or clerk of a court of record when authorized to take acknowledgments, a notary public, justice of the peace, a commissioner of deeds, or a United States commissioner, who shall certify to the fact of the acknowledgment and to the identity of the assignor. The official seal of said court, notary public, or commissioner shall be affixed to the certificate. When the acknowledgment is taken before a justice of the peace or other officer without an official seal (except a manager of a land office), it must be accompanied by an additional certificate under seal of proper authority, establishing the official character of such official and the genuineness of his signature.

(b) Powers of attorney must be acknowledged in like manner.

§ 131.13 *Assignments by unmarried females.* Assignments executed by unmarried females must be accompanied by evidence that they have attained the age of 21 years.

§ 131.14 *When copy of decree of court is required with assignments.* Assignments executed by a commissioner, or other designated person acting under a decree of court, must be accompanied by a duly certified copy of such decree in which all the proceedings should be recited, and from which it must appear that due, proper, and legal notice of the proceedings had been given to all parties in interest. The jurisdiction of the court must appear. Where assignments can not be produced, the Director of the Bureau of Land Management will determine the title to a bounty-land warrant according to the principles and usages of law and equity.

§ 131.15 *Two assignments by same party.* Where two assignments exist, executed by the same party in favor of different individuals, whether the assignment first in time has been completed or not, to make the second assignment available it must be established by evidence satisfactory to the Bureau of Land Management, either that no title passed under the first assignment or that all claims thereunder have been transferred to the second assignee, renounced, or abandoned.

§ 131.16 *Erasure of name.*¹ When the name of a person has been inserted in an assignment of a warrant and erased, there should be filed evidence satisfactory to the Bureau of Land Management, consisting of a statement of the assignor, or party or parties by whom said name was inserted and the erasure made, fully explaining the facts and circumstances of such insertion and erasure, and stating that no transfer or delivery of said warrant was made to the party whose name had been so inserted, and that the ownership or custody of said warrant had not been changed by such insertion, which statement shall be accompanied by satisfactory evidence that a copy of the same has been served personally or by registered letter upon the party whose name was inserted. The statement should set forth that the further object thereof is to afford such party an opportunity to file a protest in the Bureau of Land Management against the use of the warrant. When the name of a bona fide assignee has been erased from a transfer, an assignment from said assignee to the present holder of the warrant will be required to perfect the title to the warrant. Material erasures in powers of attorney must be satisfactorily explained.

§ 131.17 *Assignment executed in a foreign country.* When the assignment of a warrant is executed in a foreign country, and the acknowledgment taken by an

officer authorized by the laws thereof to perform such duties, the attestation of the American consul in such country should be obtained as to the official character and genuineness of the signature of such official. If the official character, etc., of the foreign officer is attested by a consular agent of such foreign government residing in this country, the latter's official character must be certified by the diplomatic representatives of such government in the United States. When such assignments are executed in a foreign language duly authenticated translations thereof must be furnished. Secretaries of legation and consular officers of the United States are authorized to take acknowledgments, but they must certify the same under their official seals.

§ 131.18 *Assignment after minor warrantee has attained his majority.* When the persons named as warrantees are described in the warrant as minors, their assignments thereof must be accompanied by satisfactory evidence that they had attained their majority at the date of the transfer.

§ 131.19 *Assignment executed and witnessed but not acknowledged.* When an assignment has been executed and witnessed, but not acknowledged, it may be proved in open court, but a certified transcript of the proceedings must be attached to the warrant. Such unacknowledged assignment may also be established to the satisfaction of the Bureau of Land Management by competent evidence. When such assignment has not been properly attested, it must be made anew.

§ 131.20 *Assignment by an Indian residing among whites.* When an assignment is made by an Indian residing among whites, the prescribed form will be adopted with this addition, that the officer taking the acknowledgment shall certify that the Indian is capable of contracting, the amount paid for the warrant, and that he saw the same paid to the Indian.

§ 131.21 *Assignment by an Indian holding tribal relations.* Where an assignment is made by an Indian holding tribal relations, his identity and ability to contract must be certified by the superintendent of Indian Affairs or Indian agent, either of his own knowledge or on the testimony of the chiefs certifying to the amount paid for said warrant; that the same was paid in his presence; and that the transaction was fair and regular. In either case, if the amount paid is not a fair consideration, the assignment will be disregarded.

§ 131.22 *Assignment for minor Indians.* (a) Where a warrant for the service of an Indian is issued or descends to minors who no longer retain their tribal relations, it must be located or sold by a guardian duly appointed and authorized by the proper court for that purpose.

(b) Where the minor or minors retain their tribal relations, the agent or superintendent must certify that they are entitled to the warrant under the laws, usages, and customs of the tribe; and when sold or located, that it was done by the guardian or such proper representative as, according to said laws, usages, and customs, was fully authorized.

(c) Where the signature of a superintendent or an Indian agent is required, the genuineness of the signature of that officer must be certified to by the Commissioner of Indian Affairs.

§ 131.23 *Assignability of warrant.*

(a) Prior to June 3, 1858, bounty-land warrants were regarded as real estate. Consequently a transfer of a warrant before that date by an administrator must be accompanied by evidence that the same was made in pursuance of an order of court for the sale of the real estate of the decedent.

(b) By the act of June 3, 1858 (11 Stat. 308; 43 U. S. C. 832), bounty-land warrants were declared to be personal chattels, and, as such, assignable by the warrantees, by their widows in certain cases, by their heirs or legatees, or by the legal representatives of the deceased claimant "for the use of such heirs or legatees only."

(c) It follows that the right to assign inures to the assignees of the vendors named in paragraph (b) of this section, and to their heirs, legatees, or legal representatives; but these latter are not required to assign "for the use of the heirs or legatees only."

§ 131.24 *Descent of title, to widow of warrantee.* Where a warrant has been issued in the name of a deceased soldier, who had applied therefor before his death, the title thereto is declared by section 2444, Revised Statutes (43 U. S. C. 832), to vest in the widow, if there be one, and if there be no widow, then in the heirs or legatees of the claimant.

§ 131.25 *Vesting of title on death of warrantee before issue of warrant.* If the claimant died and left a widow, who also was deceased before the issue of the warrant, then the title thereto vests in the heirs or legatees of the warrantee.

§ 131.26 *Court certificate required when warrantee is deceased.* To make a warrant issued in the name of a deceased person available it should be accompanied by a certificate under seal from the proper court having probate jurisdiction, showing the fact of the death of the warrantee at a specified date and place, and whether he left a widow, giving her name, if there was one. If there was no widow the said certificate should state whether the warrantee died testate or intestate and give the names of all his heirs at law, specifying adults and minors. Where the assignee of a warrant is deceased a similar certificate should be exhibited setting forth the fact, time, and place of death, his testacy or intestacy, and, in the event he left no will, the names, ages, and places of residence of all the heirs.

§ 131.27 *Assignment by widow, her heirs, or legal representatives.* If it shall appear from the certificate required by § 131.26 that the warrantee died before the issue of the warrant and left a widow, the assignment of such widow, her heirs, or legal representatives, will be a sufficient conveyance of the warrant.

§ 131.28 *Vesting of title on death of warrantee after issue of warrant.* If the warrantee died after the issue of the warrant, or if he died before such issue and left no widow, the title vests in his heirs at law or legatees.

¹ 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

§ 131.29 *Requirements in connection with assignments by heirs.* (a) If the warrantee died intestate his heirs, shown to be such by the required certificate of court, may assign the warrant, the adults for themselves and the minors by their guardians, who shall file with the warrant a certified copy of their letters of guardianship or a certificate from the clerk of the proper court stating that such letters had been issued and that they were in force at the date of the assignment.

(b) Or the administrator of the estate of the deceased warrantee who died intestate may assign the warrant "for the use of the heirs or legatees only," upon filing therewith a certified transcript of the letters of administration or a certificate from the clerk of the proper court that the said letters had been issued and that they were in force at the date of the assignment. Satisfactory evidence may also be required to show that the administrator was appointed at the instance of the heirs or proper parties in interest and transferred the warrant for their benefit.

§ 131.30 *Transcript of will required.* If the warrantee or his assignee died testate a certified transcript of the will must accompany the warrant. If the will specifically disposes of the warrant the legatee or legatees may assign, if adults, in the usual form; if minors, by their guardians as aforesaid. If the will does not specifically dispose of the warrant the executor of the estate of the warrantee may assign "for the use of the heirs or legatees only," but in that case a certified transcript of the letters testamentary or a certificate from the proper authority that such letters had been granted and were in force at the date of the assignment must accompany the transfer.

§ 131.31 *Assignment by administrator de bonis non, with will annexed.* An assignment executed by an administrator de bonis non, with the will annexed, of the estate of the deceased warrantee or transferee must be accompanied by evidence of his authority to act as required in the case of an administrator of the state of a warrantee who died intestate.

§ 131.32 *Loss or destruction of warrant.* Upon the loss or destruction of a warrant, or where the lawful owner has been fraudulently deprived thereof, the

parties may file in the Bureau of Land Management a statement setting forth a description of the warrant by number, act, and acreage, their interest in the premises, a history of the assignment thereof, a description in detail of its disappearance, and the names of all parties in interest. If the same is deemed sufficient to identify the warrant, and satisfactory in other respects, it will be entered as a caveat against the satisfaction of the warrant. Thereafter the Bureau of Land Management will take all reasonable precautions to prevent a use of the warrant by persons not entitled to the benefits thereof. The doctrine governing innocent purchasers of negotiable instruments does not apply to warrants.

§ 131.33 *Reissued warrants.* Warrants reissued under Revised Statutes, section 2441 (43 U. S. C. 829), are subject to the same rules respecting assignments that apply to original warrants; but in default of an assignment from the warrantee a decree of title must be obtained from a court of competent jurisdiction and a transcript thereof appended to the reissued warrant. Legal notice must be given to all parties in interest. In proper cases the Bureau of Land Management may accept other satisfactory evidence that the original warrant had been assigned to the claimant.

§ 131.34 *Return of warrant, where location is canceled.* When an entry made by the location of a warrant properly assigned to the locator has been canceled, the warrant will be returned to its owner. A transfer of the land by the locator of a warrant is held to carry the warrant. This title reverts to the locator if he indemnifies the grantee for all loss sustained by such cancellation either by the return of the purchase money or by causing the paramount title to the land to be vested in said grantee. Applications for the return of warrants must be accompanied by the duplicate certificate of location or a statement showing the inability of the parties to present the same; evidence that the certificate of location and no assignments thereof were recorded in the proper county; and evidence consisting of a certificate from the proper recording officer, or an abstract of title prepared by a reliable abstracter showing all transfers of the land. When the land has been transferred by the locator or those in privity with him there must also be furnished evidence as to

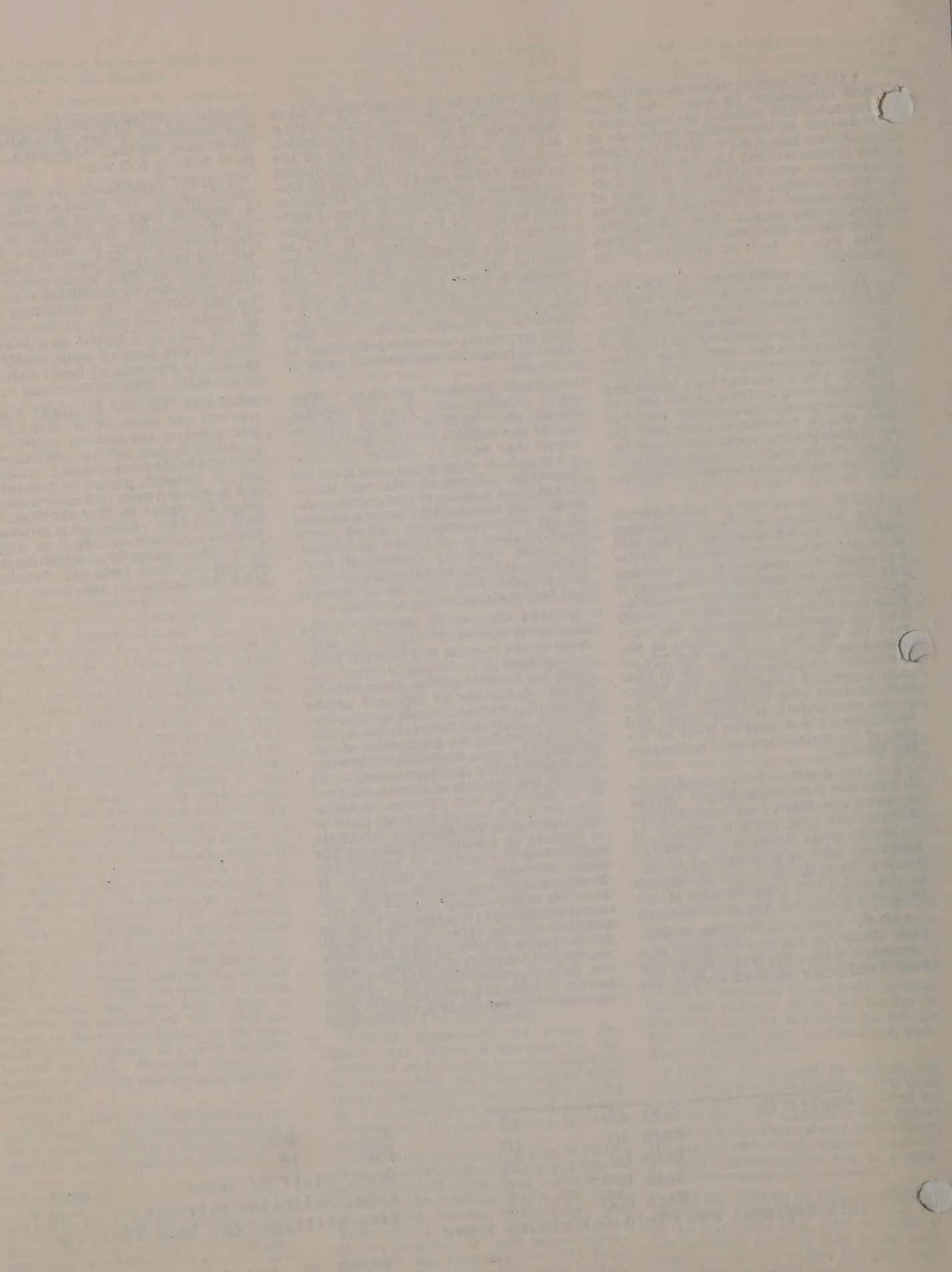
whether or not the grantee sustaining the loss occasioned by the cancellation of the location has been indemnified. (See R. M. Stitt, 33 L. D. 315.)

§ 131.35 *Substitution for objectionable warrant.* (a) When a valid entry is withheld from patent on account of the objectionable character of the warrant located thereon, the parties in interest may procure the issue of patent to the locator by filing in the proper district land office an acceptable substitute for said warrant. The substitution must be made in the name of the original locator, and may consist of a warrant, cash, or any kind of scrip legally applicable to the class of lands embraced in the entry. Two warrants can not be

substituted for one originally located, nor will any payment be received that would destroy the identity of the entry.

(b) Cash can not be substituted in locations made since March 2, 1889, outside of Missouri, except in preemption and homestead cases and cases under the act of December 13, 1894 (28 Stat. 594; 43 U. S. C. 783). Attention is directed to *Hussman v. Durham* (165 U. S. 145, 41 L. ed. 664). Authority to substitute must be first procured from the Bureau of Land Management in each case.

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Bureau of Land Management
Land Office
Billings, Montana

AUG 22 1955

Rec'd

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management,
Department of the Interior

(Circular 1915)

PART 244—RIGHTS-OF-WAY OTHER THAN
FOR RAILROAD PURPOSES AND FOR LOG-
GING ROADS ON THE OREGON AND CALI-
FORNIA AND COOS BAY REVESTED LANDS

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MONTANA LAND OFFICE

1 Manager QJA
Chief Adj. _____
Admin. Asst. _____
Accounts _____
Minerals Adj. _____
2 Land Adj. EW THS SA
Status _____
Mail & Files _____
For Action _____
For Information _____
For Filing _____

Copy to:

Each AA and LO
Each DFO and DGO
Each SO
All Reg'l and Field Sol. 1

25

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BFS and ESO

Wash. Staff Officers

Asso. Solicitor Parriott

Miss Williams GS Room 3219 20

Each 10

5

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APPLICATIONS¹

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SUBPART A—GENERAL REGULATIONS APPLICABLE TO ALL RIGHTS-OF-WAY PROVIDED FOR IN THIS PART¹

AUTHORITY: §§ 244.1 to 244.21 Issued under R. S. 161, 453, 2478; 5 U. S. C. 22, 43 U. S. C. 2, 1201.

DEFINITIONS

§ 244.1 *Definitions.* As used in §§ 244.1 to 244.69:

- (a) "Secretary" means the Secretary of the Interior.
- (b) "Director" means the Director, Bureau of Land Management.
- (c) "Area Administrator" means area administrator of the Bureau of Land Management.
- (d) "Manager" means manager of the land office for the district in which the lands applied for are situated. For areas for which there is no land office "manager" means the Eastern States Supervisor.
- (e) "Project" means the physical structures in connection with which the right-of-way is approved.
- (f) "Construction work" means any and all work, whether of a temporary or permanent nature, done in the construction of the project.
- (g) "Superintendent in charge" means the officer of the United States having supervision of the land under authority of the agency having jurisdiction and control over the land involved.
- (h) "Reservation lands" includes national parks and monuments, or any other reservations of the United States for the use of or administration by the National Park Service, the Fish and Wildlife Service, the Bureau of Reclamation, or any agency outside the Department of the Interior.
- (i) "Right-of-way" includes license, permit, or easement, as the case may be, and, where applicable, includes "site".

INDIAN LANDS

§ 244.2 *Indian lands.* The Bureau of Indian Affairs has jurisdiction over applications for rights-of-way over and upon Indian lands. All applications for the use and occupancy of Indian lands for right-of-way purposes should, therefore, be filed with the Superintendent of the Indian Agency or other superintendent in charge of the reservation on which the lands involved are situated, in accordance with the regulations contained in 25 CFR Part 256.

§ 244.3 *Application.*² No special form of application is required. The application should be in typewritten form or legible handwriting. It must specify that it is made pursuant to the regulations in this part and that the applicant agrees that the right-of-way if approved, will be subject to the terms and conditions of the applicable regulations contained in this part. It should also cite the act to be invoked and state the primary purpose for which the right-of-way is to be used. Applications shall be filed in the proper land office in the State or Territory, or for lands in a State in which there is no land office, shall be filed with the Bureau of Land Management, Washington 25, D. C., except the applications for lands in North or South Dakota shall be filed in the land office at Billings, Montana; applications for lands in Nebraska or Kansas shall be filed in the land office at Cheyenne, Wyoming; and for lands in Oklahoma in the land office at Santa Fe, New Mexico. If the right-of-way has been utilized without authority prior to the time the application is made, the application must state the date such utilization commenced and by whom, and the date the applicant alleges he obtained control of the improvements.

§ 244.4 *Showing as to organization required of corporations.* (a) An application by a private corporation must be accompanied by a copy of its charter or articles of incorporation, duly certified by the proper State official of the State where the corporation was organized.

(b) A corporation, other than a private corporation, should file a copy of the law under which it was formed and due proof of organization under the same.

(c) When a corporation is operating in a State other than that in which it was incorporated, it must submit a certificate of the Secretary of State or other proper official of the State that it has complied with the laws of that State governing foreign corporations to the extent required to entitle the company to operate in such State.

(d) A copy of the resolution or by-laws of the corporation authorizing the filing of the application must also be filed.

(e) If the corporation shall have previously filed with the Bureau the papers required by this section, the requirements shall be held to be met if, in making subsequent applications, specific reference is made to such previous filing by date, place, and case number.

§ 244.5 *Showing as to citizenship required of individuals; showing by associations of individuals.* (a) An individ-

ual applicant applying for a right-of-way under any right-of-way act, except the act of March 3, 1891 (26 Stat. 1101; 43 U. S. C. 946 et seq.), and the act of January 13, 1897 (29 Stat. 484; 43 U. S. C. 952-955), as amended, must state whether he is native born or naturalized, and, if naturalized, the date of naturalization, the court in which naturalized, and the number of the certificate, if known. If citizenship is claimed by virtue of naturalization of the father, evidence of his naturalization, and that the applicant resided in the United States thereafter while a minor, should be furnished. Where the husband and the wife are native born and a statement to that effect is made, additional information as to the marital status is not required. In other cases, a married woman or widow must show the date of her marriage; a widow must show, in addition, the date of the death of her husband.

(b) An application by an association, including a partnership, must be accompanied by a certified copy of the articles of association, if any; if there be none, the application must be made over the signature of each member of the association. Each member must furnish evidence of citizenship where it would be required if he were applying individually.

§ 244.6 *Documents which must accompany application—(a) Maps.* Each application, other than a reservoir declaratory statement under § 244.30, must be accompanied by a map prepared on tracing linen and three or, in the case of electric transmission lines, five print copies thereof, showing the survey of the right-of-way, properly located with respect to the public land surveys so that said right-of-way may be accurately located on the ground by any competent engineer or land surveyor. The map should comply with the following requirements:

(1) The scale should be 2,000 feet to the inch for rights-of-way for such structures as canals, ditches, pipelines, and transmission lines and 1,000 feet to the inch for rights-of-way for reservoirs, except where a larger scale is required to represent properly the details of the proposed developments, in which case the scales should be 1,000 feet to the inch and 500 feet to the inch, respectively. For electric transmission lines having a nominal voltage of less than 33 kv. map scales may at option of the applicant be 5,280 feet to the inch.

(2) Courses and distances of the center line of the right-of-way or traverse line of the reservoir should be given; the courses referred to the true meridian either by deflection from a line of known bearing or by independent observation, and the distances in feet and decimals thereof. Station numbers with plus distances at deflection points on the traverse line should be shown.

(3) The initial and terminal points of the survey should be accurately connected by course and distance to the nearest corner of the public-land surveys, unless that corner is more than 6 miles distant, in which case the connection will be made to some prominent natural object or permanent monument,

¹ This part does not apply to the obtaining of rights-of-way by Federal agencies over unreserved, or withdrawn, or reserved public domain lands. Such rights-of-way may be appropriated under the principles of the instructions of January 13, 1916 (44 L. D. 513), with the consent of the agency having jurisdiction or control over the land.

² In addition to the material contained under this heading, the subpart relating to the particular type of right-of-way involved should be consulted. See Subparts B through L of this part.

³ 18 U. S. C. 1001 makes it a crime for any person knowingly and wilfully to make to any department or agency of the United States any false, fictitious, or fraudulent statements or representations as to any matter within its jurisdiction.

GENERAL PROVISIONS*

which can be readily recognized and recovered. The station number and plus distance to the point of intersection with a line of the public-land surveys should be ascertained and noted, together with the course and distance along the section line to the nearest existing corner, at a sufficient number of points throughout the township to permit accurate platting of the relative position of the right-of-way to the public-land survey.

(4) If the right-of-way is across or within reservation lands which are not covered by the public-land surveys, the map shall be made in terms of the boundary survey of the reservation to the extent it would be required above to be made in terms of the public-land surveys.

(5) All subdivisions of the public-land surveys within the limits of the survey should be shown in their entirety, based upon the official subsisting plats, with the subdivisions, section, township, and range clearly marked.

(6) The width of the canal, ditch, or lateral at high-water line should be given and the width of all other rights-of-way shall be given. If the width is not uniform, the location and amount of the change in width must be definitely shown. In the case of a pipeline, the diameter of the line should be given. For reservoirs, the capacity in acre-feet, the area within the high-water line, the source of the water supply, and the location and height of the dam must be shown. The total distance of the right-of-way on the Federal lands shall be stated. In the case of a reservoir or other site, the total acreage shall be stated.

(7) Each copy of the map should bear upon its face a statement of the engineer who made the survey and the certificate of the applicant. The statement and certificate referred to are embodied in Forms 1 and 2, which are made a part hereof and which should be modified so as to be appropriate to the act invoked and the nature of the project.⁴

(8) Whenever it is found that a public-land survey monument or reservation boundary monument will be destroyed or rendered inaccessible by reason of the proposed development, at least two permanent marked witness monuments should be established at suitable points, preferably on the surveyed lines. A brief description of the witness monuments and the connecting courses and distances to the original corners should be shown.

(b) *Evidence of water right.* If the project involves the storage, diversion, or conveyance of water, the applicant must file a statement of the proper State official, or other evidence, showing that he has a right to the use of the water.

Where the State official requires an applicant to obtain a right-of-way as a prerequisite to the issuance of evidence of a water right, if all else be regular, a right-of-way may be granted conditioned only upon the applicant's filing the required evidence of water right from the State official within a specified reasonable time. The conditional right-of-way will terminate at the expiration of the time allowed.

§ 244.7 *Nature of the interest granted; settlement on right-of-way.* (a) No interest granted by the regulations in this part shall give the holder thereof any estate of any kind in fee in the lands. The interest granted shall consist of an easement, license, or permit in accordance with the terms of the applicable statute; no interest shall be greater than a permit revocable at the discretion of the authorized officer unless the applicable statute provides otherwise. Unless a specific statute or regulation provides otherwise, no interest granted shall give the grantee any right whatever to take from the public lands or reservations any material, earth, or stone for construction or other purpose, but stone and earth necessarily removed from the right-of-way in the construction of a project may be used elsewhere along the same right-of-way in the construction of the same project.

(b) All persons entering or otherwise appropriating a tract of public land, to part of which a right-of-way has attached under the regulations in this part, take the land subject to such right-of-way and without deduction of the area included in the right-of-way.

§ 244.8 *Commencement of construction work in advance of approval of right-of-way; trespass.* (a) Permission to commence construction work over and through lands under the jurisdiction of the Department of the Interior or of its agencies in advance of the approval of a right-of-way may be granted by the manager upon a satisfactory showing of the necessity for such action and upon a determination, after the request for permission has been cleared by all interested agencies of the Department, that such action is compatible with the public interest. Requests for such advance authority need not meet the formal requirements of §§ 244.3-244.5 and may be filed with the agency having supervision of the land involved, in which case a duplicate request must be filed in the office specified in § 244.3.

(b) Any grant of advance permission is solely for the convenience of the applicant and is not a commitment by the Department that a right-of-way will be approved. The Department's authority in acting on a right-of-way application is not restricted in any way by the grant of advance permission or any requirements laid down in such grant of permission and the Department may impose additional or different requirements, within the scope of the applicable statute and lawful regulations thereunder, as conditions precedent to the approval of the right-of-way. A grant of advance permission is revocable at will, and the grantee assumes all the risk of operating under such permission.

(c) Any occupancy or use of the lands of the United States without authority will subject the person occupying or using the land to prosecution and liability for trespass.

§ 244.9 *Terms and conditions.* An applicant, by accepting a right-of-way, agrees and consents to comply with and be bound by the following terms and conditions, excepting those which the Secretary may waive in a particular case:

(a) To comply with State and Federal laws applicable to the project for which the right-of-way is approved, and to the lands which are included in the right-of-way, and lawful existing regulations thereunder.

(b) To clear and keep clear the lands within the right-of-way to the extent and in the manner directed by the superintendent in charge; and to dispose of all vegetative and other material cut, uprooted, or otherwise accumulated during the construction and maintenance of the project in such manner as to decrease the fire hazard and also in accordance with such instructions as the superintendent in charge may specify.

(c) To take such soil and resource conservation and protection measures, including weed control, on the land covered by the right-of-way as the superintendent in charge of such lands may request.

(d) To do everything reasonably within his power, both independently and on request of any duly authorized representative of the United States, to prevent and suppress fires on or near the lands to be occupied under the right-of-way, including making available such construction and maintenance forces as may be reasonably obtainable for the suppression of such fires.

(e) To build and repair such roads, fences, and trails as may be destroyed or injured by construction work and to build and maintain necessary and suitable crossings for all roads and trails that intersect the works constructed, maintained, or operated under the right-of-way.

(f) To pay the United States the full value for all damages to the lands or other property of the United States caused by him or by his employees, contractors, or employees of the contractors, and to indemnify the United States against any liability for damages to life, person, or property arising from the occupancy or use of the lands under the right-of-way, except that where a right-of-way is granted hereunder to a State or other governmental agency which has no legal power to assume such a liability with respect to damages caused by it to lands or property, such agency in lieu thereof agrees to repair all such damages.

(g) To notify promptly the superintendent in charge of the amount of merchantable timber, if any, which will be cut, removed, or destroyed in the construction and maintenance of the project, and to pay the United States through such superintendent in advance of construction such sum of money as such superintendent may determine to be the full stumpage value of the timber to be so cut, removed, or destroyed.

(h) To comply with such other specified conditions, within the scope of the applicable statute and lawful regulations thereunder, with respect to the occupancy and use of the lands as may be found by the agency having supervision of the lands to be necessary as a condition to the approval of the right-of-way in order to render its use compatible with the public interest.

* See appendix for form to be placed on maps.

⁴ In addition to the material contained under this heading, the subpart relating to the particular type of right-of-way involved should be consulted. See Subparts B through L of this part.

(i) That upon revocation or termination of the right-of-way, unless the requirement is waived in writing, he shall, so far as it is reasonably possible to do so, restore the land to its original condition to the entire satisfaction of the superintendent in charge.

(j) That he shall at all times keep the manager informed of his address, and, in case of corporations, of the address of its principal place of business and of the names and addresses of its principal officers.

(k) That in the construction, operation, and maintenance of the project, he shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin and shall require an identical provision to be included in all subcontracts.

(l) That the allowance of the right-of-way shall be subject to the express condition that the exercise thereof will not unduly interfere with the management, administration, or disposal by the United States of the lands affected thereby, and that he agrees and consents to the occupancy and use by the United States, its grantees, permittees, or lessees of any part of the right-of-way not actually occupied or required by the project, or the full and safe utilization thereof, for necessary operations incident to such management, administration, or disposal.

(m) That the right-of-way herein granted shall be subject to the express covenant that it will be modified, adapted, or discontinued if found by the Secretary to be necessary, without liability or expense to the United States, so as not to conflict with the use and occupancy of the land for any authorized works which may be hereafter constructed thereon under the authority of the United States.

§ 244.10 Proposed or existing national forest. Whenever a right-of-way is sought through or in national forest lands, or any area withdrawn for inclusion within a national forest, the applicant must enter into such stipulations and execute such bond as the Forest Service may require for the protection of such existing or proposed national forest.

§ 244.11 National parks and monuments. (a) The act of March 3, 1921 (41 Stat. 1353, 16 U. S. C. 797), provides that no right-of-way for dams, conduits, reservoirs, power houses, transmission lines, or other works for storage or carriage of water, or for the development, transmission, or utilization of power within the limits as then constituted of any national park or monument, shall be approved without specific authority of Congress.

(b) Whenever a right-of-way is desired through any national park or monument for purposes other than those excepted by the act of March 3, 1921, or not otherwise expressly prohibited by law, the applicant must show to the satisfaction of the Director, National Park Service, that the location and use of the right-of-way for the purposes contemplated will not interfere with the uses and purposes for which the park or monument was originally dedicated, and will not result in damage or injury to the natural conditions of property or scenery existing therein. The applicant

must also file such stipulations and bond as may be required by the Director, National Park Service. Ordinarily, such a right-of-way may be allowed only on a showing of absolute necessity.

§ 244.12 Oregon and California Railroad and Coos Bay Wagon Road grant lands. All applications for rights-of-way for the construction and operation of any project over Oregon and California Railroad lands, title to which was vested in the United States by the act of June 9, 1916 (39 Stat. 218), and re-conveyed Coos Bay Wagon Road lands, act of February 26, 1919 (40 Stat. 1179), must also be accompanied by a statement showing the amount of merchantable timber, if any, to be cut, removed, or destroyed in the construction of the project works, and agreeing to deposit with the Bureau, in advance of construction, such sum of money as may be determined to be the full stumpage value of the timber to be so cut, removed, or destroyed, and an affirmative showing that favorable action on the application will not adversely affect or impair watershed protection, streamflow regulation, and other conservation features enumerated in the act of August 28, 1937 (50 Stat. 874).^a

§ 244.13 Alaska. All general right-of-way laws, and the regulations thereunder contained in this part, are applicable to Alaska.^b

§ 244.14 Approval of right-of-way. (a) Where an application is complete and in conformity with the law and regulations and all required reports have been obtained and it is determined that the approval of the right-of-way will not be contrary to the public interest, including that of the Government; the manager will approve the right-of-way.^c

(b) An application which does not conform with the law or regulations under which filed or the approval of which would be inconsistent with the public or Government interest, will be rejected.

§ 244.15 Use of right-of-way—(a) Proof of construction. A period of 5 years from the date of the approval of the right-of-way is usually allowed for construction unless a different period is provided by statute. Upon completion of construction, proof thereof should be submitted to the manager, consisting of a statement and certificate furnished by the holder of the right-of-way. The statement and certificate are embodied in Forms 5 and 6, which should be modified so as to be appropriate to the act and to the nature of the project.^d If, in construction, a substantial deviation from the location shown on the original map is planned or made, the party in

interest must file a duly executed relinquishment of the unused portion of the right-of-way accompanied by a map of amended location of the right-of-way for the project as actually constructed. The map of amended location must be prepared in accordance with § 244.6 (a) and must be filed before or as soon as possible after the deviation is made. The relinquishment may be prepared so as to become effective upon approval of the amended location. Any deviation made prior to such approval will be at the risk of the applicant.

(b) *Nonconstruction, abandonment, or nonuse.* Unless otherwise provided by law, rights-of-way are subject to cancellation by the authorized officer for failure to construct within the period allowed and for abandonment or nonuse.

§ 244.16 Revocation for violation of regulations or terms or conditions. All rights-of-way approved pursuant to this part, except those granted for pipe lines pursuant to section 28 of the act of February 25, 1920, as amended August 21, 1935 (49 Stat. 678; 30 U. S. C. 185), shall be subject to cancellation for the violation of any of the provisions of this part applicable thereto or for the violation of the terms or conditions of the right-of-way. No right-of-way shall be deemed to be canceled except on the issuance of a specific order of cancellation.

§ 244.17 Change in jurisdiction over or disposal of lands. (a) A change of jurisdiction over the lands from one Federal agency to another will not cancel a right-of-way involving such lands. It will, however, change the administrative jurisdiction over the right-of-way.

(b) The final disposal by the United States of any tract traversed by a right-of-way shall not be construed to be a revocation of the right-of-way in whole or part, but such final disposition shall be deemed and taken to be subject to such right-of-way until it is specifically canceled.

§ 244.18 Transfer of right-of-way. Any proposed transfer, by assignment, lease, operating agreement or otherwise, of a right-of-way acquired under any of the acts, except the act of March 3, 1891 (26 Stat. 1101; 43 U. S. C. 946-949), must be filed in triplicate in accordance with § 244.3 for approval; must be accompanied by the same showing of qualifications of the assignee as is required of applicants; and must be supported by a stipulation that the assignee agrees to comply with and be bound by the terms and conditions of the right-of-way. No assignment will be recognized unless and until approved.

§ 244.19 Disposal of property on termination of right-of-way. Upon the termination of a right-of-way by expiration or by prior cancellation, in the absence of any agreement to the contrary, if all moneys due the Government thereunder have been paid, the holder of the right-of-way will be allowed six months or such additional time as may be granted in which to remove from the right-of-way all property or improvements of any kind, other than a road and usable improvements to a road, placed thereon by him; but if not removed within the time allowed, all such property and improvements shall become the property of the United States.

^a The general right-of-way statutes were extended to these lands by sec. 2 of the act of June 9, 1916 (39 Stat. 218), and sec. 3 of the act of February 26, 1919 (40 Stat. 1179).

^b See sec. 3 of the act of August 24, 1912 (37 Stat. 512; 48 U. S. C. 23), and 30 Op. Atty. Gen. 387 (1915).

^c Where the land over which the right-of-way is sought is withdrawn or reserved for the use of another Federal agency, the manager is required to clear the application with such agency.

^d See appendix for forms.

§ 244.20 *Appeals.* An appeal pursuant to the Rules of Practice (Part 221 of this chapter) may be taken from any decision of the manager to the Director, and from the Director to the Secretary.

RENTAL CHARGES

§ 244.21 *Payment required; exceptions; default; revision of charges.* (a) The charge for use and occupancy of public and reservation lands for rights-of-way for telephone, telegraph, and power transmission lines, water pipelines, ditches or canals under the act of February 15, 1901 (31 Stat. 790; 43 U. S. C. 959); telephone, telegraph, and power transmission lines under the act of March 4, 1911 (36 Stat. 1253; 43 U. S. C. 961); tramroads under the act of January 21, 1895 (28 Stat. 635; 43 U. S. C. 956); oil and gas pipelines under section 28 of the Mineral Leasing Act of February 25, 1920 (41 Stat. 449), as amended August 21, 1935 (49 Stat. 678; 30 U. S. C. 185); and water pipelines, ditches, flumes, tunnels, or canals under section 4 of the act of February 1, 1905 (33 Stat. 628; 16 U. S. C. 524), shall be at the rate of five dollars (\$5) per mile or fraction thereof per calendar year or fraction thereof for rights-of-way not over 100 feet in width and one dollar (\$1) per mile or fraction thereof for each additional 20 feet or fraction thereof in width.

(b) The charge for use and occupancy of public and reservation lands for reservoirs, dams, water plant and powerplant sites, well sites, and similar purposes under the act of February 15, 1901; sites for pumping stations or other structures authorized under section 28 of the Mineral Leasing Act, as amended; and dams, reservoirs, and water-plant sites under section 4 of the act of February 1, 1905, shall be based on the value of the land and the use to which it is to be put, but in no case will the minimum charge be less than five dollars (\$5) per calendar year or fraction thereof. The charge for micro wave relay and communication sites other than radio and television broadcast sites shall be based upon the value of the land, but in no case will the annual charge be less than fifty dollars (\$50) per site. The charge for radio and television broadcast sites shall be based on the value of the land but in no case will the annual charge be less than the following:

Stations not over:

1,000 watts input power-----	\$75.00
2,500 watts input power-----	100.00
5,000 watts input power-----	200.00
10,000 watts input power-----	250.00
20,000 watts input power-----	300.00
All others-----	450.00

(c) No rental charge will be required for the use and occupancy of public or reservation lands under a right-of-way authorizing such use and occupancy exclusively for irrigation projects, municipally operated projects, non-profit or REA cooperative projects, or when the use is by a Government agency.

(d) (1) There shall be remitted with the application the amount provided as the rental for a calendar year or fraction thereof.

(2) Where the application is for a reservoir, dam, well, or plant sites, etc., the sum of five dollars (\$5), the minimum charge specified for such cases, shall be remitted with the application.

(e) The holder of the right-of-way thereafter shall pay, on or before the first day of each calendar year, the rental charges for that calendar year in accordance with paragraphs (a) and (b) of this section. If the rental charge is not paid when due, and such default shall continue for thirty days after the first day of January, action may be taken to cancel the right-of-way. After default has occurred, no structures, buildings, or other equipment may be removed from the right-of-way except upon written permission first obtained from the regional administrator.

(f) At any time not less than five years after either the approval of the right-of-way or the last revision of rental charges thereunder, the authorized officer, after reasonable notice and opportunity for hearing, may review such charges and impose such new charges as may be reasonable and proper commencing with the ensuing calendar year.

(g) The provisions of this section shall not have the effect of changing, modifying, or amending the rental rates or charges imposed for existing water power projects under rights-of-way previously approved by this Department. (31 Stat. 790, 36 Stat. 1253, 28 Stat. 635, Sec. 4, 33 Stat. 628, Sec. 28, 49 Stat. 678; 43 U. S. C. 959, 961, 956, 16 U. S. C. 524, 30 U. S. C. 185)

SUBPART B—RIGHTS-OF-WAY THROUGH PUBLIC LANDS AND RESERVATIONS FOR CANALS, DITCHES, AND RESERVOIRS UNDER THE ACT OF MARCH 3, 1891, AS AMENDED^{10 11}

AUTHORITY: §§ 244.22 to 244.28 issued under R. S. 161, 453, 2478; 5 U. S. C. 22, 43 U. S. C. 2, 1201.

§ 244.22 *Statutory authority.* (a) Section 18 of the act of March 3, 1891 (26 Stat. 1101), as amended by the acts of March 4, 1917 (39 Stat. 1197), and May 28, 1926 (44 Stat. 668; 43 U. S. C. 946) authorizes the Secretary to grant rights-of-way for irrigation and drainage purposes over public lands and reservations to the extent of the ground occupied by the water of any reservoirs and any canals and laterals and 50 feet on each side of the marginal limits thereof and such additional right-of-way as may be deemed necessary for the proper operation and maintenance of said reservoirs, canals, and laterals.

(b) Section 19 of the act of March 3, 1891 (26 Stat. 1102; 43 U. S. C. 947), provides that a map of the canal or ditch and reservoir must be filed within twelve months after the location of ten miles of a canal if the same be upon surveyed lands, and if upon unsurveyed lands, within twelve months after the survey thereof by the United States; that upon the approval thereof by Secretary, the same shall be noted upon the records and thereafter all lands affected by such right-of-way shall be disposed of subject to such right-of-way.

¹⁰ See Solicitor's opinion of July 16, 1942 (58 L. D. 29), for a discussion of the applicability of various acts relating to rights-of-way for canals, ditches, and reservoirs.

¹¹ In addition to the material under this heading, the general regulations under Subpart A of this part should be consulted.

(c) Section 20 of the act of March 3, 1891 (26 Stat. 1102; 43 U. S. C. 948), provides that this act shall apply to all canals, ditches, or reservoirs theretofore or thereafter constructed, whether by corporations, individuals, or association of individuals, on the filing of the certificates and maps as therein provided; that if any section of the project is not completed within 5 years after location, the right-of-way shall be forfeited as to the uncompleted canal, ditch, or reservoir, to the extent that the same is not completed at the date of forfeiture.

(d) Section 21 of the act of March 3, 1891 (26 Stat. 1102; 43 U. S. C. 949), provides that nothing in this act shall authorize the occupancy of such right-of-way except for the purpose for which it was approved, and then only so far as may be necessary for the construction, maintenance, and care of the project.

§ 244.23 *Pipelines, flumes, and conduits included; use of materials on adjacent lands.* (a) The act of March 3, 1891, as amended, is applicable to rights-of-way for pipelines, flumes, or other conduits, although they are not specifically mentioned in the act, if water is conveyed primarily for irrigation or drainage purposes.

(b) Material on adjacent lands: The word "adjacent", as used in section 18 of the act, in connection with the right to take material for construction from the public lands, must be construed according to the conditions of each case (28 L. D. 439). The right extends only to construction, and no public timber or material may be taken or used for repair or improvements (14 L. D. 566). These decisions were rendered under the Railroad Right-of-Way Act of March 3, 1875 (18 Stat. 482; 43 U. S. C. 934), and are applied to the act of March 3, 1891, since the wording with respect to the use of material is the same.

§ 244.24 *Use subsidiary to main purpose of irrigation.* Section 2 of the act of May 11, 1898 (30 Stat. 404; 43 U. S. C. 951), authorizes the use of rights-of-way approved under the act of March 3, 1891, for purposes subsidiary to the main purpose of irrigation.

§ 244.25 *Caretaker's building sites.* The act of March 1, 1921 (41 Stat. 1194; 43 U. S. C. 950), authorizes the Secretary, except as to lands within national forests, to grant permits or easements for not to exceed 5 acres of ground adjoining the right-of-way at each of the locations, to be determined by the Secretary, to be used for the erection thereon of dwellings or other buildings or corrals for the convenience of those engaged in the care and management of the works provided for by the act of March 3, 1891, as amended.

§ 244.26 *Showing required for additional right-of-way.* The act of May 28, 1926 (44 Stat. 668; 43 U. S. C. 946), amended section 18 of the act of March 3, 1891, so as to authorize, if needed, a right-of-way additional to the 50 feet allowed by the section for operation and maintenance of reservoirs, canals, ditches, and laterals. To obtain such additional right-of-way, an explanatory showing must accompany the applica-

tion. This should consist of a statement by the applicant's engineer or surveyor setting forth succinctly the extent of the additional right-of-way required and the necessity thereof. The additional right-of-way should also be shown graphically by lateral limit lines on the map filed in connection with the application. If additional right-of-way is wanted only for portions or sections of the reservoirs, canals, ditches, or laterals, the termini thereof should be fixed by engineer's survey stations in addition to the lateral limit lines.

§ 244.27 *Procedure when unsurveyed land is involved.* (a) Maps filed under the said act, as amended, showing canals, ditches, laterals, and reservoirs lying partly upon unsurveyed land can be approved if the application and accompanying maps conform to these regulations, but the approval will only relate to that portion of the right-of-way traversing the surveyed land.¹³

(b) Maps showing canals, ditches, laterals, and reservoirs lying wholly on unsurveyed lands may be received and placed on file in the Bureau of Land Management for general information. The date of filing will be noted thereon; but the maps will not be approved as the act makes no provision for the approval of any but maps showing locations on surveyed lands. The filing of such maps will not dispense with the filing of maps after the survey of the lands and within the time specified in the act, and if the maps are regular in all respects they will receive the manager's approval.

§ 244.28 *Segregated reservoir sites.* The act of February 26, 1897 (29 Stat. 599; 43 U. S. C. 664), permits the approval of applications under the act of March 3, 1891, for rights-of-way upon reservoir sites reserved under authority of the act of October 2, 1888 (25 Stat. 526; 43 U. S. C. 662), and August 30, 1890 (26 Stat. 371, 391; 43 U. S. C. 662).

SUBPART C—RESERVATION OF PUBLIC LANDS FOR RESERVOIRS FOR WATERING LIVESTOCK¹⁴

AUTHORITY: §§ 244.29 to 244.37 issued under 29 Stat. 484, 42 Stat. 1437; 43 U. S. C. 952-955.

§ 244.29 *Statutory authority.* (a) By the act of January 13, 1897 (29 Stat. 484; 43 U. S. C. 952-955), it is provided that any person, livestock company, or transportation corporation engaged in breeding, grazing, driving, or transporting livestock may construct reservoirs upon unoccupied public lands of the United States, not mineral or otherwise reserved, for the purpose of furnishing water to such livestock, and shall have control of such reservoir, under regulations prescribed by the Secretary of the Interior, and the lands upon which the

same is constructed, not exceeding 160 acres, so long as such reservoir is maintained and water kept therein for such purpose. The act does not apply to lands in grazing districts, and applications for stock-watering reservoirs on such lands should be filed under section 4 of the Taylor Grazing Act (48 Stat. 1271; 43 U. S. C. sec. 315c) and Part 161 of this chapter.

(b) Section 1 of the act of January 13, 1897, as amended by the act of March 3, 1923 (42 Stat. 1437; 43 U. S. C. 952), authorizes the Secretary of the Interior, in his discretion, under such rules, regulations, and conditions as he may prescribe, upon application by such person, company, or corporation, to grant permission to fence reservoirs constructed under the act of January 13, 1897, in order to protect livestock, to conserve water, and to preserve its quality and conditions, provided, that such reservoir shall be kept open to the free use of any persons desiring to water animals of any kind.

§ 244.30 *Declaratory statement.* To apply for a reservoir site under §§ 244.29 to 244.37, the applicant must file with the manager a declaratory statement drawn in accordance with Form 7.¹⁴ No other application is necessary.

§ 244.31 *Action on declaratory statements; size, location, and number of reservoir sites.* For the filing of the reservoir declaratory statement a fee of \$1 will be charged (R. S. 2238; 43 U. S. C. 82). In acting upon these statements the following general rules will be applied:

(a) No reservation will be made for a reservoir of less than 250,000 gallons capacity, and for a reservoir of less than 500,000 gallons capacity, not more than 40 acres can be reserved. For a reservoir of 500,000 gallons and less than 1,000,000 gallons capacity, not more than 80 acres can be reserved. For reservoir of 1,000,000 gallons and less than 1,500,000 gallons capacity, not more than 120 acres can be reserved. For a reservoir of 1,500,000 gallons capacity or more, 160 acres may be reserved. In the case where the water is furnished the livestock by artificial means, such as by windmill, pump, tanks, and troughs, the regulations requiring a minimum capacity of 250,000 gallons may be waived upon the claimant's submitting a satisfactory showing that by such artificial means he will be able to furnish sufficient water and provide proper troughs and facilities to properly accommodate all cattle likely to water at the place in question.

(b) Not more than 160 acres shall be reserved for this purpose in any section.

(c) Not more than 160 acres shall be reserved for this purpose in one group of tracts adjoining or cornering upon each other.

(d) A distance of one-half mile must be left between any two groups of tracts which aggregate more than 160 acres.

(e) Lands so reserved shall be kept open to the free use of any person desiring to water animals of any kind. If the lands so reserved are not kept open to the free use of any person desiring to water animals of any kind, or if the reservoir applicant attempts to use them

for any other purpose, or if the reservation is not obtained for the bona fide and exclusive purpose of constructing and maintaining a reservoir thereon according to law, the declaratory statement, upon any such matter being made to appear, will be canceled and all rights thereunder be declared at an end.

(f) Notwithstanding his action in accepting any such declaratory statement, the manager will reject the same if upon considering the matters set forth therein it appears that the declaratory statement is not filed in good faith for the sole purpose of accomplishing what the law authorizes to be done.

§ 244.32 *Time for construction.* The reservoir must be constructed and completed within 2 years after the filing of the declaratory statement; otherwise the right-of-way will be subject to cancellation.

§ 244.33 *Map of constructed reservoir.* After the construction and completion of the reservoir the applicant shall have the same accurately surveyed and mapped showing its location with relation to the public land surveys. The map must be prepared in accordance with the requirements of § 244.6 and be filed with the manager and must bear Forms 8 and 9.¹⁵

§ 244.34 *Approval of constructed project.* The map and papers will be examined to determine whether they comply with the law and the regulations, and whether the amount of land desired is warranted by the showing made in the application. If found satisfactory, they will be approved, and the lands shown to be necessary for the proper use and enjoyment of the reservoir will be reserved from other disposition so long as the reservoir is maintained and water kept therein for the purposes named in the act. When such reservation is made the manager will make the proper notations on his records.

§ 244.35 *Annual proof of maintenance.* In order that this reservation shall be continued, it is necessary that the reservoir "shall be kept in repair and water kept therein." For this reason the owner of the reservoir will be required, during the month of January of each year, to file with the manager a statement to the effect that the reservoir has been kept in repair and water kept therein during the preceding year, and that all the provisions of the act have been complied with. Form 10¹⁶ will be used for this statement. Upon failure to file such statement, steps will be taken looking to the revocation of the reservation of the lands.

§ 244.36 *Procedure when unsurveyed land is involved.* (a) In any case where the proposed reservoir is to be located upon unsurveyed public land, the declaratory statement may be filed, the land being therein described by metes and bounds and, as well, by the description which it is believed it will bear when officially surveyed. Proof of construction must be submitted at the end of the same period of time and in the same manner as is prescribed and required in cases where the lands have been previously surveyed. Such proof should embrace the field notes and a plat of

¹³ By letter of August 21, 1937, approved by the Department in the case of the Twin Lakes Reservoir and Canal Company (Denver 045465), it was held that a right-of-way may be acquired under the 1891 act, by actual construction of a project in advance of the filing of an application and approval of the right-of-way over unsurveyed lands, upon the same principle applied to railroads under the act of March 3, 1875 (18 Stat. 482; 43 U. S. C. 934-939).

¹⁴ In addition to the material under this heading, the general regulations under Subpart A of this part should be consulted.

¹⁵ See appendix for forms.

¹⁶ See appendix for forms.

survey such as is required in cases of reservoirs on surveyed lands, with such modifications as are necessary (§ 244.33).

(b) Any reservation made pursuant to the act of January 13, 1897, secures only a license to use and occupy the reserved land with and for a reservoir, and this license may endure permanently or may be of transient duration. No estate in the land is granted. For this reason it is administratively undesirable that private surveys made pursuant to the statute and §§ 244.29 to 244.37 shall be preserved and established by subsequent public-land surveys and approved plats thereof. Therefore, when the public-land surveys have been extended over land covered by a reservoir declaratory statement affecting unsurveyed lands, the declarant shall adjust his survey to the line of the official survey, showing the location of the reservoir with respect to said lines by means of properly established tie lines. Any subsequent reservation which may be ordered will be of those subdivisions or aliquot parts of subdivisions thus shown to be occupied by or necessary for the proper use of the reservoir.

(c) An annual statement of maintenance must be submitted the same as though the reservoir had been constructed on surveyed lands. Nothing in §§ 244.29 to 244.37 shall preclude the Bureau of Land Management from requiring additional information in any case where that information is deemed proper or necessary.

§ 244.37 *Application to fence reservoir; plat required.* Any person, company, or corporation desiring to secure the benefits of the act of March 3, 1923, should file in accordance with § 244.3 an application, duly corroborated by at least two disinterested witnesses, setting forth such facts as would show that it is necessary to fence such reservoir in order to protect the livestock, to conserve water, and to preserve its quality and conditions. There should be filed with such application, and as a part thereof, a plat showing the land embraced in the reservoir as near as may be, the location of the proposed fence with respect to such reservoir, together with all gates or other openings and roadways leading to the same. In no instance will an application be considered unless said plat shows the location of at least two gates. Said gates shall be so constructed and maintained that they may be, at all times, readily opened and closed by any person desiring to water animals of any kind, and such gates shall be so placed as to be readily accessible from the road or roads nearest the reservoir, which roads shall be the ones usually traveled and, where there are no such roads to govern the location of such gates, they shall be so situated as to make the reservoir readily available from the adjacent public or other range. There shall be posted on the gates, and elsewhere if necessary, a notice stating that the reservoir is for stock-watering purposes, located on public lands, and that the same is open to the free use of any person desiring to water animals of any kind.

SUBPART D—RIGHTS-OF-WAY THROUGH PUBLIC LANDS AND RESERVATIONS FOR TELEPHONE AND TELEGRAPH LINES, TRANSMISSION LINES, RADIO AND TELEVISION SITES, AND FOR PIPE LINES, CANALS, DITCHES, AND WATER PLANTS UNDER THE ACTS OF FEBRUARY 15, 1901 AND MARCH 4, 1911³⁷

AUTHORITY: §§ 244.39 to 244.47 Issued under 31 Stat. 790, 36 Stat. 1253; 43 U. S. C. 959, 961.

§ 244.39 *Statutory authority.* (a) The act of February 15, 1901 (31 Stat. 790; 43 U. S. C. 959), authorizes the Secretary, under such regulations as he may fix, to permit the use of rights-of-way through public lands and certain reservations of the United States, for electrical plants, poles, and lines for the generation and distribution of electrical power, and for telephone and telegraph purposes, and for pipe lines, canals, ditches, water plants, and other purposes to the extent of the ground occupied by such canals, ditches, water plants, or other works permitted thereunder and not to exceed 50 feet on each side of the marginal limits thereof, or not to exceed 50 feet on each side of the center line of such pipe lines, telephone and telegraph lines, and transmission lines, by any citizen, association, or corporation of the United States, where it is intended by such to exercise the use permitted under the act.

(b) The act of March 4, 1911 (36 Stat. 1253; 43 U. S. C. 961), as amended, authorizes the head of the department having jurisdiction over the lands, under general regulations fixed by him, to grant an easement for rights-of-way for a period not exceeding 50 years, over and across public lands and reservations of the United States, for poles and lines for the transmission and distribution of electrical power, and for poles and lines for communication purposes and for radio, television and other forms of communication transmitting, relay and receiving structures and facilities to the extent of 200 feet on each side of the center line of such lines and poles and not to exceed four hundred feet by four hundred feet for superstructures and facilities to any citizen, association, or corporation of the United States, where it is intended by such to exercise the use permitted under the act.³⁸

(c) The applicability of the acts of February 15, 1901, and March 4, 1911, to rights-of-way for power purposes over public lands, was superseded by the Federal Power Act of June 10, 1920 (41 Stat. 1063), as amended by sections 201 to 213 inclusive, of the act of August 26, 1935 (49 Stat. 838; 16 U. S. C. 791-825r), as to power projects for the generation and transmission of hydroelectric power, defined in section 3 (11) of the act,

excepting distribution lines. Applications for hydroelectric power plant sites or rights-of-way for main or primary hydroelectric power transmission lines must be made to the Federal Power Commission, Washington, D. C., under the act of June 10, 1920, as amended. Rights-of-way for transmission lines which are not primary lines must be secured under the act of February 15, 1901, or the act of March 4, 1911. See 18 CFR 2.2.

§ 244.40 *Applications for lands in national forests and other reservations.* (a) Applications under the act of February 15, 1901,³⁹ for rights-of-way across national forests should be prepared in accordance with the regulations issued by the Department of Agriculture and submitted to the proper officer thereof. In case a right-of-way is desired upon public lands partly within and partly without a national forest, separate applications must be prepared, and the one affecting lands within the national forest filed with the forest officer, and the other filed in accordance with § 244.3.

(b) Applications for a right-of-way under the act of March 4, 1911, involving lands under the control of a department or agency other than the Department of the Interior should be prepared in accordance with the regulations issued by such department or agency and submitted to the proper officer thereof.⁴⁰

§ 244.41 *Applications which may be submitted under the acts of February 15, 1901, and March 4, 1911.* (a) All applications where it is sought to acquire a right-of-way for the main purpose of irrigation, as contemplated by sections 18 to 21 of the act of March 3, 1891 (26 Stat. 1101; 43 U. S. C. 946-949), and section 2 of the act of May 11, 1898 (30 Stat. 404; 43 U. S. C. 951), must be submitted under the 1891 and 1898 acts, in accordance with the applicable regulations in this part.

(b) An application may be filed under the act of February 15, 1901, for a stock-watering reservoir site. Rights-of-way will not be approved for stock-watering reservoirs on wildlife refuges. An application under the act for a "water plant" site or for a pipeline right-of-way may include an area for a well to supply the water; but if, because the lands affected are within a grazing district established under the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269; 43 U. S. C. 315 et seq.), as amended, or for any other reason, the granting of a right-of-way for a stock-watering reservoir site, or for a water plant site or for a pipeline would adversely affect the interest of the Government, the application therefor will not be allowed. If the lands affected are within a grazing district, an application for a stock-watering reservoir or water well site should be filed under section 4 of said act of June 28, 1934, if the applicant is qualified under the section and if the reservoir or well is necessary to the care and management of the permitted livestock and primarily for that purpose. Regulations under the said section 4 are contained in § 161.14 of this chapter.

³⁹ See section 1 of the act of February 1, 1905 (33 Stat. 628; 16 U. S. C. 472).

⁴⁰ See 29 Op. Atty. Gen. 303.

³⁷ In addition to the material under this heading, the general regulations under Subpart A of this part should be consulted.

³⁸ The opinion of the Solicitor of the Department of the Interior of November 1, 1940 (*M. 30846*), held that lands acquired by the United States, by purchase or otherwise, were reservation lands within the meaning of the acts of February 15, 1901, and March 4, 1911.

(c) Applications for rights-of-way for telephone, telegraph, and power transmission lines may also be submitted under either the act of February 15, 1901, or the act of March 4, 1911, in accordance with the applicable regulations contained in this part. Applications for radio, television and other forms of communication transmitting, relay and receiving structures and facilities should be submitted under the act of March 4, 1911, as amended.

(d) Any application under the act of March 4, 1911 for a line right-of-way in excess of 100 feet in width or for a structure or facility right-of-way of over 10,000 square feet must state the reasons why the larger right-of-way is required. Rights-of-way will not be issued in excess of such sizes in the absence of a satisfactory showing of the need therefor.

§ 244.42 *Plant sites; buildings to be platted on maps.* (a) When an application is made for a right-of-way for a site for a water plant or for a communication structure or facility, the location and extent of ground proposed to be occupied by buildings or other structures necessary to be used in connection therewith must be clearly designated on the map and described on Forms 3 and 4²¹ by reference to course and distance from a corner of the public survey. In addition to being shown in connection with the main drawing, the buildings or other structures must be platted on the map in a separate drawing on a scale sufficiently large to show clearly their dimensions and relative positions. When two or more such proposed structures are to be located near each other, it will be sufficient to give the reference to a corner of the public survey for one of them, provided all the others are connected therewith by course and distance shown on the map. The application must also state the proposed use of each structure, and must show definitely that each one is necessary for a proper use of the right-of-way for the purpose contemplated in the act of February 15, 1901. If the right-of-way is within reservation lands which are not covered by the public land surveys, the map shall be made in terms of the boundary survey of the reservation to the extent it would be required above to be made in terms of the public land surveys.

(b) If the application is for a power plant site it must also contain a statement giving a description of the proposed power plant including the number and capacity of prime movers and generators proposed to be installed, initially and ultimately, together with similar pertinent information about any substations included in the project and whether the power plant is to be interconnected with other generating facilities owned by the applicant or others; and whether the power generated is to be sold to others at wholesale or retail or used by the applicant for its own domestic, agricultural, or industrial purposes.

§ 244.43 *Transmission lines.* When an application is made for a right-of-way for a transmission line, it must also contain the following:

(a) A description of the plant or connecting generating plants which generate or will generate the power to be transmitted over such line, such description to be in sufficient detail to show, to the satisfaction of the authorized officer, the character, capacity, and location of such plants.

(b) A description of the transmission line of which the line for which a right-of-way is requested forms a part, giving in reasonable detail the points between which it will extend, its characteristics and purpose. There must also be included a statement as to the voltage for which the line is designed and at which it is to be operated initially, and a statement as to whether it is to serve a single customer, or a number of customers, or is intended to transmit power solely for the applicant's use. If the line is to serve a single customer or is for the applicant's own use, the nature of such use must be given (such as airway beacon, coal mine, and irrigation pumps).

§ 244.44 *Terms and conditions.* By accepting a right-of-way for a power transmission line, the applicant thereby agrees and consents to comply with and be bound by the following terms and conditions, excepting those which the Secretary may waive in a particular case, in addition to those specified in § 244.9:

(a) To protect in a workmanlike manner, at crossings and at places in proximity to his transmission lines on the right-of-way authorized, in accordance with the rules prescribed in the National Electric Safety Code, all Government and other telephone, telegraph, and power transmission lines from contact, and all highways and railroads from obstruction, and to maintain his transmission lines in such manner as not to menace life or property.

(b) Neither the privilege nor the right to occupy or use the lands for the purpose authorized shall relieve him of any legal liability for causing inductive or conductive interference between any project transmission line or other project works constructed, operated, or maintained by him on the servient lands, and any radio installation, telephone line, or other communication facilities now or hereafter constructed and operated by the United States or any agency thereof.

§ 244.45 *No rights acquired prior to filing and approval of application.* Application under the act of February 15, 1901, or the act of March 4, 1911, for permission to use the desired right-of-way through the public lands and reservations must be filed and approved before any rights can be claimed thereunder.

§ 244.46 *Unsurveyed lands.* Permission may be given under the act of February 15, 1901, and the act of March 4, 1911, for a right-of-way over unsurveyed lands as well as surveyed lands.

§ 244.47 *Expiration and renewal of right-of-way.* Unless otherwise specified in a right-of-way granted under the act of March 4, 1911, and unless sooner canceled, the right-of-way shall expire 50 years from the date thereof. If, however, within the period of 1 year prior to the expiration date, the grantee shall file, in accordance with § 244.3, a written application to renew the right-of-way,

and shall agree to comply with all the laws and regulations existing at such expiration date governing the occupancy and use of the lands of the United States for the purpose desired, the right-of-way may be renewed for a period of not to exceed 50 years. If such application is filed, the existing right-of-way will be extended subject to then existing and future rules and regulations, pending consideration of the application.

SUBPART E—RIGHTS-OF-WAY THROUGH NATIONAL FORESTS FOR DAMS, RESERVOIRS, WATER PLANTS, DITCHES, FLUMES, PIPES, TUNNELS, AND CANALS FOR MUNICIPAL OR MINING PURPOSES, UNDER THE ACT OF FEBRUARY 1, 1905²²

AUTHORITY: §§ 244.48 to 244.51 issued under sec. 4, 33 Stat. 628; 16 U. S. C. 524.

§ 244.48 *Statutory authority.* Section 4 of the act of February 1, 1905 (33 Stat. 628; 16 U. S. C. 524), grants rights-of-way through national forests to citizens and corporations of the United States, for the construction and maintenance of dams, reservoirs, water plants, ditches, flumes, pipes, tunnels, and canals, for municipal or mining purposes, and for the purpose of the milling and reduction of ores, during the period of the beneficial use, under such rules and regulations as may be prescribed by the Secretary of the Interior, and subject to the laws of the State or Territory in which said forests are respectively situated.

§ 244.49 *When construction may commence.* No construction will be allowed in national forests until an application for right-of-way has been regularly filed in accordance with §§ 244.1 to 244.20, 244.48 to 244.51, and has been approved, or unless permission for construction in advance of the right-of-way grant has been specifically given.

§ 244.50 *Water plant structures.* When application is made for a right-of-way for water plants, § 244.42 should be followed, with appropriate changes in the prescribed forms.

§ 244.51 *Procedure when unsurveyed land is involved.* Maps showing reservoirs, canals, water plants, and other structures wholly upon unsurveyed lands, will be received and acted upon in the manner prescribed for surveyed lands.

SUBPART F—RIGHTS-OF-WAY UNDER THE ACT OF JANUARY 21, 1895, OVER PUBLIC LANDS FOR TRAMROADS AND OTHER ROADS FOR LOGGING AND MINING PURPOSES,²³ EXCEPT LOGGING ROADS OVER REVESTED AND RECONVEYED AND INTERMINGLED PUBLIC LANDS IN OREGON²⁴

AUTHORITY: §§ 244.52 and 244.53 issued under 28 Stat. 635; 43 U. S. C. 956.

²¹ In addition to the material under this heading, the general regulations under Subpart A of this part should be consulted.

²² In an opinion of July 16, 1942 (58 I. D. 29), the Solicitor of the Department of the Interior held that the act of February 15, 1901 (31 Stat. 790; 43 U. S. C. 959), superseded the part of the 1895 act authorizing rights-of-way for canals and reservoirs.

²³ In addition to the material under this heading, the general regulations under Subpart A of this part should be consulted.

²⁴ See appendix for forms.

§ 244.52 *Statutory authority.* The act of January 21, 1895 (28 Stat. 635; 43 U. S. C. 956), authorizes the Secretary under such general regulations as may be fixed by him to permit the use of rights-of-way over the public lands of the United States, for tramroads to the extent of 50 feet on each side of the center line of the tramroad, by any citizen or association of citizens of the United States, engaged in the business of mining, quarrying, or of cutting timber and manufacturing lumber. The act does not authorize the use of rights-of-way within the limits of any park or military reservation. The act is made applicable to national forests and reservoir sites by the act of March 3, 1899 (30 Stat. 1233; 16 U. S. C. 525, 43 U. S. C. 665, 958). Where the authorized officer determines it to be in the public interest, he will require applicants under this section to execute the same type of right-of-way and road use agreements for the connecting road system as may be required under Part 115 of this chapter with appropriate modifications to meet local conditions: *Provided*, That where the land over which the right-of-way is requested is under the jurisdiction of an agency other than the Bureau of Land Management, such requirement shall be made only with the concurrence of the authorized officer of such agency. The authorized officer may require an applicant for or holder of a tramroad right-of-way to execute a bond on Form 4-414, modified to refer to the applicable sections of this part, in an amount, not less than \$500 per mile or fraction thereof, to be determined by the authorized officer conditioned on compliance with §§ 244.1 to 244.21 and 244.52 and 244.53. The arbitration procedures involved in the stipulations shall be in accordance with State law, if any is applicable. In the absence of applicable State law, controversies involving arbitration shall be arbitrated in accordance with the rules then obtaining of the American Arbitration Association.

§ 244.53 *Tramroads defined.* Tramroads are considered as including tramways, railroads, and motor-truck roads to be used in connection with mining, quarrying, logging, and the manufacturing of lumber.

CROSS REFERENCE: Applications for logging road permits over revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands and intermingled public lands administered by the Bureau of Land Management which are in and west of Range 8 East, Willamette Meridian, Oregon, must be made under Part 115 of this chapter.

SUBPART G—TRANSFERS OF PUBLIC LANDS AND RESERVATIONS FOR HIGHWAYS, ROAD BUILDING MATERIAL AND MAINTENANCE SITES, ROADSIDE AND LANDSCAPE DEVELOPMENT AREAS AND FLIGHT STRIPS, UNDER THE FEDERAL AID HIGHWAY ACT²⁶

AUTHORITY: §§ 244.54 to 244.56 issued under R. S. 161, 453, 2478; 5 U. S. C. 22, 43 U. S. C. 2, 1201.

§ 244.54 *Statutory authority—*(a) *Highways and material sites.* (1) Section 17 of the Federal Aid Highway Act of November 9, 1921 (42 Stat. 216; 23 U. S. C. 18), authorizes the transfer of

public lands and reservations of the United States to the State highway departments on determination by the Secretary of Commerce²⁷ that such lands are necessary for the right-of-way for any highway or forest road or as a source of materials for the construction and maintenance of such roads and highways, and after his request for such transfer with a map showing the portions of such lands which it is desired to appropriate.²⁸ The section does not authorize transfers to Territories.

(2) This statute provides that if within a period of 4 months after such filing the Secretary of the department supervising the administration of such land or reservation shall not have certified to the Secretary of Commerce that the proposed transfer of such lands is contrary to public interest or inconsistent with the purposes for which such land or materials have been reserved, or shall have agreed to the appropriation and transfer under conditions which he deems necessary for the adequate protection and utilization of the reserve, then such land or materials may be appropriated and transferred to the State highway departments for such purposes.²⁹ If and when the need for any such land or materials shall no longer exist, notice of that fact must be given by the State highway department to the Secretary of Commerce, and such lands or materials will immediately revert to the control of the Secretary of the Department from which they had been appropriated.³⁰

(b) *Roadside and landscape development areas.* The act of June 8, 1938 (52 Stat. 633; 23 U. S. C. 10b), authorizes rights-of-way for roadside and landscape development under section 17 of the Federal Aid Highway Act.

(c) *Flight strips.* Section 8 of the act of November 19, 1941 (55 Stat. 767; 23 U. S. C. 108), authorizes rights-of-way under the Federal Aid Highway Act for flight strips adjacent to public highways or roadside-development areas along such highways.

(d) *Extent of grant.* Rights-of-way granted pursuant to the Federal Aid Highway Act, as supplemented and amended, do not include rights-of-way for facilities with respect to which any other provision of law specifically requires the filing of an application for a

right-of-way. Where the holder of the highway right-of-way determines that such facility will not seriously impair the scenic and recreational values of an area and its consent is obtained, the Department waives the requirement of an application for a right-of-way for all facilities usual to a highway along a highway right-of-way granted pursuant to the Federal Aid Highway Act, as supplemented and amended, except for electric transmission facilities, designed for operation at a nominal voltage of 33 kv or above, or designed for conversion to such operation, or for oil or gas pipe lines which are more than two miles long and are not part of any other pipe line crossing public lands. Applications shall be made under §§ 244.39 to 244.47, inclusive, with respect to any right-of-way for an electric transmission facility subject to this exception, and under §§ 244.60 to 244.66, inclusive, for pipe line facilities subject to this exception. Where the holder of the right-of-way consents to the construction of usual highway facilities, as stated above, such holder shall be responsible for compliance with § 244.9 in connection with the construction and maintenance of such facilities.

§ 244.55 *Filing of application.* Where a right-of-way is desired under the provisions of section 17 of the act of November 9, 1921, and the amendment or supplements thereto, for any of the purposes mentioned in § 244.54, an application and maps should be filed in the manner prescribed by §§ 244.3 and 244.6 (a). Such application should be filed by the State highway department of the particular State and not by any political subdivision of the State. No application will be received by the Bureau for rights-of-way affecting lands entirely within a national forest or an Indian reservation.

§ 244.56 *Action on application.* Upon receipt of an application filed under section 17 of the act of November 9, 1921, or acts supplemental thereto, which affects unpatented lands or patented lands, acquired by the United States, under the jurisdiction of this Department, Bureau procedure relating to rights-of-way will be followed, and in addition the manager will return a duplicate map or maps to the State highway department which will forward them to the Secretary of Commerce for his determination that the lands are necessary for the purposes desired, as required by the act. Upon the receipt of such determination, if all else be regular, the right-of-way will be approved.

SUBPART H—RIGHTS-OF-WAY FOR THE CONSTRUCTION OF HIGHWAYS OVER PUBLIC LANDS UNDER R. S. 2477

AUTHORITY: §§ 244.57 to 244.59 issued under R. S. 161, 453, 2478; 5 U. S. C. 22, 43 U. S. C. 2, 1201.

§ 244.57 *Statutory authority.* R. S. 2477 (43 U. S. C. 932), grants rights-of-way for the construction of highways over public lands, not reserved for public uses.

§ 244.58 *Effective date and extent of grant.* (a) Grants of rights-of-way referred to in the preceding section become effective upon the construction or establishment of highways, in accordance with the State laws, over public

²⁶ In addition to the material under this heading, the general regulations under Subpart A of this part should be consulted.

²⁷ Originally the Federal Aid Highway Act provided that various functions should be administered by the Secretary of Agriculture. Through a series of transfers, the latest of which is 1949 Reorganization Plan No. 7, effective August 19, 1949 (14 F. R. 5228, 63 Stat. 1070), these functions have vested in the Secretary of Commerce.

²⁸ Considered as including maintenance and stock-pile sites.

²⁹ By decision of the Secretary, Nevada Department of Highways, A.24151, September 17, 1945, it was held that the language of the act imports discretion and indicates no intent to vest in the State a right at the end of the four months' period without further action by the Department having jurisdiction. It was held further that the interest transferred under the statute is merely a right-of-way or right to take materials and that the Government may reserve the right to dispose of leasable minerals.

³⁰ Notice by the State highway departments, that the need for the land or material no longer exists may be given directly to the Bureau of Land Management.

lands, not reserved for public uses. No application should be filed under R. S. 2477, as no action on the part of the Government is necessary. Rights-of-way granted by R. S. 2477 do not include rights-of-way for facilities with respect to which any other provision of law specifically requires the filing of an application for a right-of-way. Where the holder of the highway right-of-way determines that such facility will not seriously impair the scenic and recreational values of an area and its consent is obtained, the Department waives the requirement of an application for a right-of-way for all facilities usual to a highway along a highway right-of-way granted by R. S. 2477, except for electric transmission facilities, designed for operation at a nominal voltage of 33 kv or above, or designed for conversion to such operation, or for oil or gas pipe lines which are more than two miles long and are not part of any other pipe line crossing public lands. Applications shall be made under §§ 244.39 to 244.47, inclusive, with respect to any right-of-way for an electric transmission facility subject to this exception, and under §§ 244.60 to 244.66, inclusive, for pipe line facilities subject to this exception.

(b) Holders of grants under R. S. 2477 shall be subject to the terms and conditions of the following paragraphs of § 244.9 (b), (c), (d), (e), (i), (k). Where the holder of the highway consents to the construction of usual highway facilities, as provided above, such holder shall be responsible for compliance with the designated paragraphs of § 244.9 in connection with the construction and maintenance of such facilities.

§ 244.59 Procedure when reserved land is involved. When a right-of-way is desired for the construction of a highway under R. S. 2477, over public land reserved for public uses, and such reserved land is under the jurisdiction of the Department of the Interior, an application should be made in accordance with § 244.3 for consideration of the revocation or modification of the reserve so as to permit the operation of the statute and construction or establishment of the highway. Such application should be accompanied by a map, drawn on tracing linen, with two print copies thereof, showing the location of the proposed highway with relation to the smallest legal subdivisions of the lands affected. Unless and until the reservation shall have been revoked or modified so as to permit the construction of the highway, subject to such terms and conditions, if any, as may be deemed reasonable and necessary for the adequate protection and utilization of the reserve, no rights to establish or construct the highway will be acquired by reason of the filing of such application.

SUBPART I—RIGHTS-OF-WAY THROUGH PUBLIC LANDS AND RESERVATIONS FOR OIL AND NATURAL GAS PIPELINES AND PUMPING PLANT SITES UNDER THE MINERAL LEASING ACT³⁰

AUTHORITY: §§ 244.60 to 244.66 issued under sec. 28, 49 Stat. 678; 30 U. S. C. 185.

§ 244.60 Statutory authority. (a) Section 28 of the act of February 25, 1920 (41 Stat. 449), as amended by the acts of August 21, 1935 and August 12, 1953 (49 Stat. 678; 67 Stat. 557; 30 U. S. C. 185), authorizes the Secretary to grant rights-of-way through public lands, including the forest reserves of the United States, for pipeline purposes for the transportation of oil or natural gas to any applicant possessing the qualifications provided in section 1 of the act (41 Stat. 437; 30 U. S. C. 22, 48, 181) to the extent of the ground occupied by the said pipeline and 25 feet on each side of the same under such regulations and conditions as to survey, location, application, and use as may be prescribed by him, and upon the express conditions that such pipeline, if for oil, or for natural gas and not excepted from the common carrier provisions of section 28 of the act of February 25, 1920, as amended, as stated in paragraph (b) of this section, shall be constructed, operated and maintained as a common carrier and that every pipeline holder shall accept, convey, transport, or purchase without discrimination oil or natural gas produced from Government lands in the vicinity of the pipeline in such proportionate amount as the Secretary of the Interior may, after a full hearing, with due notice thereof to the interested parties, and a proper finding of facts, determine to be reasonable.³¹

(b) The amendatory act of August 12, 1953, cited in paragraph (a) of this section provides that the common carrier provisions of section 28 of the act of February 25, 1920, shall not apply to any natural gas pipeline operated by any person subject to regulation under the Natural Gas Act (52 Stat. 821; 15 U. S. C. 717w) or by any public utility subject to regulation by a State or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the State or municipality.

§ 244.61 Who may file application. Application may be filed by citizens of the United States, associations of such persons, any corporation organized under the laws of the United States, or of any State or Territory, and municipalities.

§ 244.62 Common carrier stipulation. Each application for a pipeline right-of-way, if for oil, or for natural gas and the pipeline has not been excepted from the common carrier provisions of section 28 of the act of February 25, 1920, as amended, as stated in § 244.60 (b), must include the following stipulation:

The applicant agrees to operate the pipeline as a common carrier in accordance with the provisions of the Mineral Leasing Act, and, within 30 days after the request of the Secretary of the Interior, to file rate schedule and tariff for the transportation of oil or gas, as the case may be, as such common carrier with any regulatory agency having jurisdiction over such transportation, as the Secretary may prescribe.

³¹ By opinion of the Attorney General of January 3, 1941 (40 Op. Atty. Gen. 9), and departmental decision, *Chiles P. Plummer*, A-23988, February 24, 1945, this statute was construed as not applying to purchased or acquired lands as they are not considered public lands within the meaning of the act.

§ 244.64 Use of pipeline. The applicant shall state in the application the specific use, within the purview of the act, to which the pipeline is to be put, and any approval of the right-of-way shall be limited to such use, unless otherwise stated in the approval. No change in the use of the pipeline from that authorized by the approval of the right-of-way shall be allowed except as follows:

(a) In the case of pipelines engaged in interstate transportation, a change may be made only with approval first obtained from the authorized officer, and upon such terms and conditions as he may prescribe as a prerequisite to the approval of the change of use. If the authorized officer does not disapprove or otherwise act upon an application for a change in use by the end of the forty-fifth day after the application is filed, he shall be deemed to have approved it without conditions other than those previously existing.

(b) In case of pipelines engaged solely in intrastate transportation, a change may be made by the grantee in the use of the pipeline for the transportation of products within the purview of the act, from that specified in the approval of the right-of-way, provided, written notice of such change is filed with the manager not less than 15 days in advance of the actual change of use. Such notice must be accompanied by a showing as to whether the change in use is to be temporary or permanent, and a statement that such change will not result in any hardship or injustice to persons operating under Federal leases who may be dependent on the pipeline as the means of transportation of their products to existing markets, and must be accompanied by the consent in writing of such lessees to the change of use.

§ 244.65 Approval of right-of-way. The approval of such right-of-way shall be subject to the express conditions that the use of the pipeline for the transportation of oil, gas, or other similar products, shall be limited to such products produced in conformity with State and Federal laws, including laws prohibiting waste.

§ 244.66 Pumping plant site. A site for a pumping station or other structures reasonably necessary to the operation of a pipeline on a right-of-way approved under section 28 of the act of February 25, 1920, or as amended by the act of August 21, 1935, may be granted under the same section (36 Op. Atty. Gen. 480). When an application is made for a right-of-way for a site, the location and extent of ground proposed to be occupied by buildings or other structures necessary to be used in connection therewith must be clearly designated on the map and described on Forms 3 and 4³² by reference to course and distance from a corner of the public survey. In addition to being shown in connection with the main drawing, the buildings or other structures must be platted on the map in a separate drawing on a scale sufficiently large to show clearly their dimensions and relative positions. When two or more such proposed structures are to be located near each other, it will be sufficient to give the reference to a corner of the public survey for one of them, provided all the others are connected therewith by course and distance

³⁰ In addition to the material under this heading, the general regulations under Subpart A of this part should be consulted.

³² See appendix for forms.

shown on the map. The application must also state the proposed use of each structure, and must show definitely that each one is necessary for a proper use of the right-of-way for the purpose contemplated in the act.

SUBPART J—RIGHTS-OF-WAY OVER LANDS SUBJECT TO A MINERAL LEASE

§ 244.67 *Statutory authority; applications.* (a) Section 29 of the act of February 25, 1920 (41 Stat. 449, 30 U. S. C. 186), provides in part:

(a) That any permit, lease, occupation, or use permitted under this act shall reserve to the Secretary of the Interior the right to permit upon such terms as he may determine to be just, for joint or several use, such easements or rights-of-way, including easements in tunnels upon, through, or in the lands leased, occupied, or used as may be necessary or appropriate to the working of the same, or of other lands containing the deposits described in this act, and the treatment and shipment of the products thereof by or under authority of the Government, its lessees, or permittees, and for other public purposes.

(b) Where another statutory provision covers the type of right-of-way desired, applications shall be made in accordance with such statute and the applicable regulations.

(c) Where there is no other statutory provision covering the type of right-of-way desired, applications shall be filed in accordance with §§ 244.1 to 244.21, inclusive.

(Sec. 32, 41 Stat. 450; 30 U. S. C. 189)

SUBPART K—RIGHTS-OF-WAY FOR FEDERAL IRRIGATION PURPOSES UNDER THE ACT OF DECEMBER 5, 1924

§ 244.68 *Statutory authority.* Section 4, subsection P, of the act of December 5, 1924 (43 Stat. 704; 43 U. S. C. 417), provides that where, in the opinion of the Secretary, a right-of-way over public land is required in connection with a reclamation project, the Secretary may reserve the same to the United States by filing in the appropriate land office copies of an instrument giving a description of the right-of-way and notice that the same is reserved to the United States for Federal irrigation purposes under this section, in which event entry for such land and the patent issued therefor shall be subject to the right-of-way so described in such instrument; and reference to each such instrument shall be made in the appropriate tract books and also in the patent.

(R. S. 2478; 43 U. S. C. 1201)

SUBPART L—RIGHTS-OF-WAY FOR TRANSMISSION LINES IN CONNECTION WITH BOULDER CANYON PROJECT UNDER THE BOULDER CANYON PROJECT ACT

§ 244.69 *Statutory authority.* Section 5 (d) of the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057; 43 U. S. C. 617d), authorizes the use by any agency receiving a contract for the purchase of electrical energy from Boulder Canyon Project of such public and reserved lands of the United States as may be necessary or convenient for the construction, operation, and maintenance of main transmission lines to transmit said electrical energy.

(R. S. 2478; 43 U. S. C. 1201)

SUBPART M—EMERGENCY ACCESS PERMITS FOR SALVAGE OPERATIONS

AUTHORITY: §§ 244.70 to 244.92 issued under 28 Stat. 635, 50 Stat. 874; 43 U. S. C. 956.

§ 244.70 *Statutory authority.* (a) The act of January 21, 1895 (28 Stat. 635, 43 U. S. C. 956), authorizes the Secretary of the Interior under such regulations as may be fixed by him to permit the use of rights-of-way over the public lands of the United States, for tram roads to the extent of 50 feet on each side of the center line of the tram road, by any citizen or association of citizens of the United States engaged in the business, among others, of cutting timber. The act of January 21, 1895, is made applicable to the revested Oregon and California railroad and the reconveyed Coos Bay wagon road grant lands by the acts of June 9, 1916 (39 Stat. 218) and February 26, 1919 (40 Stat. 1179), respectively.

(b) The act of August 28, 1937 (50 Stat. 874), provides for the conservation and the management of the said revested and reconveyed lands and authorizes the Secretary of the Interior to make rules and regulations in furtherance of such purposes.

§ 244.71 *Statement of policy.* (a) Timber lands of the United States administered by the Bureau of Land Management in western Oregon, western Washington and northwestern California and intermingled and adjacent timber lands in other ownerships during the course of the years 1950 and 1951 have been visited by wind storms of unusually high velocity which have caused extensive wind throw of standing timber. In addition, fires of unusual intensity and magnitude during the summer of the year 1951 burned through extensive acreages of standing timber in the area. Therefore, in view of the extraordinary, immediate, emergency situation, short-term emergency access permits will be issued in accordance with the terms of §§ 244.70 to 244.92 to authorize use of lands of the United States administered by the Bureau of Land Management for the purpose of access to such timber salvage operations. Such permits will not authorize the use of such lands for the removal of other timber; long-term access to any timber controlled by an applicant, whether salvage or healthy, may be obtained over lands administered by Bureau pursuant to § 115.154 et seq. of this chapter, or §§ 244.39 and 244.40.

(b) An emergency access permit will authorize access to conduct a salvage operation for a term of not more than one year, with additional time allowed for necessary road construction. No extension except as authorized pursuant to § 244.78, and no renewal of any such permit will be granted nor will more than one such permit be issued respecting any specific salvage operation.

§ 244.72 *Definitions.* Except as the context may otherwise indicate, as the terms are used in §§ 244.70 to 244.92:

(a) "Bureau" means Bureau of Land Management.

(b) "Area Administrator" means the Area Administrator, Bureau of Land Management, or his authorized representative.

(c) "District Forester" means a district forester of the Bureau who is stationed in western Oregon, western Washington or northwestern California.

(d) "Tramroads" means tramways and wagon or motor truck roads to be used in connection with logging and the manufacturing of lumber.

(e) "Salvage area" means any timber land in western Oregon, western Washington or northwestern California either (1) within the exterior boundary of an area burned by a forest fire where the resulting fire hazard has not been abated, or (2) containing merchantable wind-thrown trees, or (3) which contains standing trees killed by or dying from Douglas fir beetle infestation.

(f) "Salvage operation" means the removal of trees that, in the judgment of the District Forester, are in a salvage area and subject to rapid deterioration because they have been killed or injured by some catastrophic natural cause such as wind, fire, disease or insect infestation, and of timber which, in the judgment of the District Forester, is susceptible to insects. A salvage operation may include, in addition, the removal of healthy intermingled and adjacent trees, provided:

(1) Either the total volume of the trees to be removed does not exceed 100,000 board feet, or

(2) Such healthy trees are, in the judgment of the District Forester, physically located so that their removal is required by normal logging practices, or their removal is economically necessary to make a minimum practical logging operation; for a salvage operation in which logs can be yarded with crawler type tractors, the volume of such healthy timber shall not exceed 35 percent of the total volume to be removed, and for a salvage operation in which logs must be yarded with donkey engine the volume of the healthy timber may not exceed 65 percent of the total volume to be removed.

(g) "Timber susceptible to insects" means healthy and drought weakened living trees most immediately adjacent to and not exceeding in number the currently critically infested trees which, in turn, are immediately adjacent to an area covered with trees which are dead or dying as the result of an attack by Douglas fir beetles.

(h) "Critically infested tree" means a tree infested with Douglas fir beetles to such an extent that such infestation may be reasonably expected to cause the death of such tree.

(i) "Emergency access permit" means a permit issued pursuant to §§ 244.70 to 244.92.

(j) "Management" means police protection, fire suppression and suppression, inspection, cruising, reforestation, thinning, stand improvement, inventorying, surveying, construction and maintenance of improvements, disposal of land, the control of forest insects, pests and disease, and other activities of a similar nature.

(k) "Licensee" means with respect to any road or right-of-way, any person who is authorized to remove forest products derived from a salvage operation conducted on lands of the United States. A licensee is not an agent of the United States.

(l) "Direct control" of a road, right-of-way, or land, by an applicant for an emergency access permit, means that such applicant has authority to permit the United States and its licensees to use such road, right-of-way or land in accordance with §§ 244.70 to 244.92.

(m) "Indirect control" of a road, right-of-way, or land, by an applicant for an emergency access permit means that such road, right-of-way, or land, is not directly controlled by him but is subject to use by him or by:

(1) A principal, disclosed or undisclosed, of the applicant; or

(2) A beneficiary of any trust or estate administered or established by the applicant; or

(3) Any person having or exercising the right to designate the immediate destination of the timber to be transported over the right-of-way for which application is made; or

(4) Any person who at any time has owned, or controlled the disposition of the timber to be transported over the right-of-way applied for, and during the 24 months preceding the filing of the application has disposed of such ownership or control to the applicant or his predecessor, under an agreement reserving or conferring upon the grantor the right to share directly or indirectly in the proceeds realized upon the grantee's disposal to third persons of the timber or products derived therefrom or the right to reacquire ownership or control of all or any part of the timber prior to the time when it undergoes its first mechanical alteration from the form of logs; or

(5) Any person who stands in such relation to the applicant that there is liable to be absence of arm's length bargaining in transactions between them relating to such road, rights-of-way, or lands.

§ 244.73 *Nature of emergency access permit.* (a) An emergency access permit does not constitute an easement and does not confer any right on the permittee to any material for construction or other purposes. An emergency access permit is merely a non-exclusive license to transport across lands of the United States administered by the Bureau of Land Management and specified in such emergency access permit, forest products derived from a specified salvage operation.

(b) An emergency access permit, when issued, is intended only to afford to the permittee access necessary for an immediate salvage operation in timber which is to be specifically described in such emergency access permit. Such an emergency access permit is not intended to afford access for the harvesting of timber other than that described in such permit. Its sole function is as an aid to conservation in the immediate removal of timber, of the type described in § 244.72 (f), which constitutes a present menace to healthy timber in the area. Such emergency access permit is not intended, therefore, to accommodate logging activities of a continuing nature. Where there is more than one salvage operation to be conducted on land tributary to the same road or same road system, an emergency access permit may be issued to embrace any one or more of such operations, or a separate emergency access permit may be issued for each such operation. But with respect to any single salvage operation, no more than one emergency access permit will be issued and no renewal or extension thereof will be granted except an extension for road construction purposes, pursuant to

§ 244.78: *Provided, however, That if a permittee's access to a salvage operation is suspended by virtue of an award of arbitrators made pursuant to § 244.81, or pursuant to an agreement, approved by the District Forester, with a licensee, the term of the permit shall be extended by adding thereto a period equal to the period of such suspension.*

§ 244.74 *Filing of application.* An application for an emergency access permit must be submitted in duplicate on Form 4-1213 and filed in the office of the appropriate district forester. Application forms will be furnished by the District Forester on request. No application will be received for filing subsequent to one year from the date when §§ 244.70 to 244.92 are published in the **FEDERAL REGISTER**.

§ 244.75 *Contents of application.* (a) An individual applicant and each member of any unincorporated association which is an applicant must state in the application whether he is a native born or a naturalized citizen of the United States. Naturalized citizens will be required to furnish evidence of naturalization pursuant to the provisions of Part 137 of this chapter.

(b) An application by an unincorporated association must disclose the names of all the members of such association.

(c) An application by a private corporation must include the statement of the president, vice president or secretary of such corporation that the corporation is authorized to transact business within the State involved.

(d) Where the application is for an emergency access permit across lands over any portion of which the applicant proposes to construct a road, the application must be accompanied by two copies of a sketch map showing the approximate route of the proposed road. The authorized officer, where he finds it to be in the public interest, may require an applicant to furnish a more accurate map showing the survey of the proposed road and the specifications to which the applicant proposes to construct such road.

(e) Where the application is for the use of an existing road, the applicant must furnish a map adequate to show the location of such road, together with a statement of the nature of any improvement he proposes to make on such road.

(f) Every application must also be accompanied by a diagram indicating the roads and rights-of-way which form an integral part of the road system with which the requested route of access will connect, the portion of such road systems which the applicant directly controls within the meaning of § 244.72 (k), the portions thereof which the applicant indirectly controls within the meaning of § 244.72 (l), and the portions thereof as to which the applicant has no control within the meaning of such sections. As to the portions over which the applicant has indirect or no control, he must furnish a statement showing, for the two years preceding the date of the filing of the application, the date and nature of any change in his control. The diagram shall also contain the name of the person whom the applicant believes directly controls any portion of such road system

which the applicant does not directly control. The map must bear the certification of the applicant that the facts as to control as set forth in such map are true to the best of the applicant's information and belief.

§ 244.76 *Reciprocal road use agreement; recordation.* (a) Unless the authorized officer finds that use of the road system (including both existing roads and lands over which such roads are practically able to be extended, for authority to traverse any portion of which system the applicant seeks an emergency access permit) will not be convenient or economically necessary for access to and the removal of forest products from salvage operation on lands administered by the Bureau, the authorized officer, as a condition precedent to the issuance of such permit, shall require the applicant:

(1) As to such portions of such road system as are directly controlled by the applicant, to grant to the United States and its licensees rights of use; and

(2) As to such portions of such road system as are indirectly controlled by the applicant, either to obtain rights of use for the United States and its licensees or to make a showing satisfactory to the authorized officer that he has negotiated therefor in good faith and to waive to the United States, its licensees and permittees any exclusive or restrictive rights he might have to such portions of the road system as are indirectly controlled by him.

(b) Rights of use granted to the United States and its licensees under paragraph (a) of this section shall be for a period of time to be fixed pursuant to § 244.78 and for the purposes set forth in § 244.77. Where the United States or its licensees exercises such right of use, the permittee shall be entitled to receive compensation therefor to be fixed in accordance with the standards and procedures set forth in § 244.79 or §§ 244.80 and 244.82.

(c) Where the authorized officer finds that no such rights will be needed by the United States for the conduct of salvage operations on its lands tributary to such road system, he may issue an emergency access permit without requesting the applicant to grant any rights to the United States under this section.

(d) Any grant of rights to the United States made pursuant to this section unless modified under § 244.79, shall be executed on Form 4-1214, which shall constitute and form a part of any emergency access permit issued upon the application involved. The applicant shall record such grant in the office of land records of the county or counties in which the roads or lands subject to the agreement are located and submit to the issuing officer not later than 30 days after the issuance of the emergency access permit, a true copy of such agreement bearing the certificate of the appropriate county official as to such recordation. Failure either to cause such recordation or to furnish such certificate thereof in accordance with this paragraph shall void such emergency access permit.

§ 244.77 *Use by the United States and its licensees of rights received from a permittee.* The use by the United States and its licensees of any of the rights received from a permittee hereunder shall be limited to that which is necessary for management purposes, or to reach, by the most reasonably direct route, involving the shortest practicable use of the permittee's road system, a road or highway which is suitable for the transportation of forest products in the type and size of vehicle customarily used for such purposes and which is legally available for public use for ingress to and the removal of forest products from salvage operations on lands administered by the Bureau. However, the type and size of vehicle which may be used by the licensee on the permittee's road shall be governed by § 244.79 or § 244.81.

§ 244.78 *Duration and location of rights granted or received by the United States.* The rights granted by the United States under §§ 244.70 to 244.92, will be for a stated term of not to exceed one year for the transportation of forest products to be derived from a specified salvage operation plus not to exceed 3 months for such road construction as may be necessary: *Provided, however,* That upon a permittee's showing, made prior to the expiration of the period, if any, allowed for such construction, that unusual weather conditions have delayed completion of such construction, a district forester may in his discretion extend the period for such construction for not to exceed a total of three additional months: *And provided further,* That if a permittee's access to a salvage operation is suspended by virtue of an award made by arbitrators pursuant to § 244.81 or pursuant to an agreement, approved by the authorized officer, with a licensee, the term of the permit shall be extended by adding thereto a period equal to the period of such suspension. Rights granted to the United States shall be for such term as will enable a licensee to commence during either the calendar year in which the permit is issued or during one of the two next succeeding calendar years a salvage operation on lands administered by the Bureau, and to complete such salvage operation in accordance with the provisions of such authorization; normally such a licensee will be allowed only one year to complete a salvage operation plus not to exceed three months for the construction of any necessary access roads. In any event, a grant made to the United States under § 244.76 shall finally expire not later than four years and six months after the date when such grant is made.

§ 244.79 *Permittee's agreement with United States respecting compensation and adjustment of road use.* (a) Where the United States receives rights over any road, right-of-way, or lands, controlled directly or indirectly by a permittee, the authorized officer will seek to arrive at an agreement with the permittee respecting any or all of such matters as the time, route, and specifications for the development of the road system in the area; a reasonable fee for use by a licensee for access to and the removal of forest products from salvage operations on lands administered by the Bureau; provisions for road maintenance; the use, in addition to the uses

set forth in § 244.77, which the United States and its licensees may make of the road system involved; a formula for determining the proportionate capacity of the road system or portions thereof which shall be available to the United States and its licensees for the transportation of forest products derived from salvage operations conducted on lands administered by the Bureau; the amount and type of insurance to be carried, and the type of security to be furnished by licensees of the United States who use such road; and such other similar matters as the regional administrator may deem appropriate. To the extent necessary to fulfill the obligations of the United States under any such agreement, subsequent contracts for salvage operations on lands managed by the Bureau and tapped by such road system, will contain such provisions as may be necessary or appropriate to require such licensees to comply with the terms of the agreement.

(b) The provisions of §§ 244.80 and 244.81 shall not be applicable to any matters embraced in an agreement made pursuant to this section.

§ 244.80 *Agreements and arbitration between permittee and licensee respecting compensation payable by licensee to permittee for use of road.* (a) In the event the United States exercises the rights received from a permittee pursuant §§ 244.70 to 244.92 to license a person to remove forest products over any road, right-of-way, or lands of the permittee or of his successor in interest, to the extent that such matters are not covered by an agreement under § 244.79, such licensee will be required to pay the permittee or his successor in interest such compensation and to furnish him such security, and to carry such liability insurance as the permittee or his successor in interest and the licensee may agree upon. If the parties do not agree, then upon the written request of either party delivered to the other party, the matter shall be referred to and finally determined by arbitration in accordance with the procedures established by § 244.82.

(b) During the pendency of such arbitration proceedings, the licensee shall be entitled to use the road, right-of-way or land involved upon payment, or tender thereof validly maintained, to the permittee of an amount to be determined by the authorized officer and the furnishing to the permittee of a corporate surety bond in an amount equal to the difference between the amount fixed by him and the amount sought by the permittee. The licensee shall also, as a condition of use in such circumstances, maintain such liability insurance in such amounts covering any additional hazard and risk which may accrue by reason of the licensee's use of the road, as the regional administrator may prescribe.

(c) The arbitrators shall base their award as to the compensation to be paid by the licensee to the permittee or his successor in interest upon the amortization of the replacement costs for a road of the type involved, including in such replacement costs any extraordinary cost peculiar to the construction of the particular road involved and subtracting therefrom any capital investment made by the United States or its licensees in the particular road involved or in im-

provements thereto used by and useful to the permittee or his successor in interest plus a reasonable interest allowance on the resulting cost figure, taking into account the risk involved, plus costs of maintenance if furnished by the permittee or his successor, including costs of gates and gateman. In arriving at the amortization item, the arbitrators shall take into account the probable period of time, past and present, during

which such road may be in existence, and the volume of timber which has been moved and the volume of timber, currently merchantable, which probably will be moved from all sources over such road. The arbitrators shall also take into account the extent to which the use which the licensee might otherwise economically make of the road system is limited by § 244.77. In addition, the arbitrators may fix the rate at which payments shall be made by the licensee during his use of the road. The arbitrators shall require the licensee to provide adequate bond, cash deposit, or other security to indemnify the permittee or his successor in interest against failure of the licensee to comply with the terms of the award and against damage to the road not incident to normal usage, and for any other reasonable purpose, and also to carry appropriate liability insurance covering any additional hazard and risks which may accrue by reason of the licensee's use of the road.

(d) Where improvements or additions are required to enable a licensee to use a road or right-of-way to remove timber or forest products, the cost of such improvements will be allowable to the licensee.

(e) The full value at current stumpage prices will be allocable against a licensee for all timber to be cut, removed, or destroyed by the licensee on a permittee's land in the construction or improvement of the road involved.

§ 244.81 *Agreements and arbitration between permittee and licensee respecting adjustment of road use.* (a) When the United States exercises the right received under §§ 244.70 to 244.92 to license any person to use a road of a permittee, the permittee or his successor in interest shall not unreasonably obstruct such licensee in such use. If there has been no agreement under § 244.79 covering such matters, the permittee shall have the right to prescribe reasonable operating regulations, to apply uniformly as between the permittee and such licensee, covering the use of such road for such matters as speed and load limits, scheduling of hauls during period of use by more than one timber operator, coordination of peak periods of use, and such other matters as are reasonably related to safe operations and protection of the road; if the capacity of such road should be inadequate to accommodate the use thereof which such licensee and permittee desire to make concurrently, they shall endeavor to adjust their respective uses by agreement.

(b) If the permittee and such licensee are unable to agree as to the reasonableness of such operating regulations or on the adjustment of their respective uses where the capacity of the road is inadequate to accommodate their concurrent use, then upon the written request of either party delivered to the other party, the matter shall be referred to and finally

determined by arbitration in accordance with the procedures established by § 244.82.

(c) The arbitrators may make such disposition of a dispute involving the reasonableness of such operating regulations as appears equitable to them, taking into account the capacity and the construction of the road and the volume of use to which it will be subjected. In the determination of a dispute arising out of the inadequacy of the capacity of a road to accommodate the concurrent use by a permittee and a licensee, the arbitrators may make such disposition thereof as appears equitable to them, taking into account, among other pertinent facts, the commitments of the permittee and the licensee with respect to the cutting and removal of the salvage timber involved; the extent to which each of the parties may practically use his resources in the conduct of other salvage operations; the extent to which the timber to be salvaged constitutes a threat to healthy timber; the extent to which Federal timber has contributed to the amortization of the capital costs of such road; and the extent to which the United States or its licensees have enlarged the road capacity.

§ 244.82 *Arbitration procedure.* (a) As to arbitration proceedings relating to the terms or conditions of use of roads, rights-of-way or lands in Oregon:

(1) Within ten days after the delivery of a written request for arbitration under § 244.80 or § 244.81, each of the parties to the disagreement shall appoint an arbitrator and the two arbitrators thus appointed shall select a third arbitrator. If either party fails to appoint an arbitrator as provided herein, the other party may apply to a court of record of the State of Oregon for the appointment of such an arbitrator, as provided by the laws of such State. If within ten days of the appointment of the second of them, the original two arbitrators are unable to agree upon a third arbitrator who will accept the appointment, either party may petition such a court of record of the State of Oregon for the appointment of a third arbitrator. Should any vacancy occur by reason of the resignation, death or inability of one or more of the arbitrators to serve, the vacancy shall be filled according to the procedures applicable to the appointment of the arbitrator whose death, disability, or other inability to serve, created the vacancy.

(2) By mutual agreement, the parties may submit to a single arbitration proceeding controversies arising under both §§ 244.80 and 244.81.

(3) The arbitrators shall hear and determine the controversy and make, file, and serve their award in accordance with the substantive standards prescribed in §§ 244.80 and 244.81 for the type of controversy involved and in accordance with the procedures established by the laws of the State of Oregon pertaining to arbitration proceedings. A copy of the award shall also be served at the same time upon the area administrator, either personally or by registered mail.

(4) Costs of the arbitration proceedings shall be assessed by the arbitrators against either or both of the parties, as may appear equitable to the arbitrators,

taking into account the original contentions of the parties, the ultimate decision of the arbitrators and such other matters as may appear relevant to the arbitrators.

(b) Arbitration proceedings involving the terms or conditions of use of roads, rights-of-way or lands in California or Washington shall be in accordance with the respective State law, if any, is applicable. In the absence of applicable State law, controversies involving arbitration shall be arbitrated in accordance with the rules then obtaining of the American Arbitration Association.

§ 244.83 *Payment required for Government timber.* An applicant will be required to pay in advance of the issuance of the permit, the full stumpage value as determined by the authorized officer of the estimated volume of all timber to be cut, removed, or destroyed, in the construction or operation of the road on lands administered by the Bureau.

§ 244.84 *Payment to the United States for road use.* Where the permittee receives a right to use a road constructed or acquired by the United States, which is under the administrative jurisdiction of the Bureau of Land Management, he will be required to pay to the United States for the use thereof, except where he transports forest products purchased from the United States through the Bureau, a reasonable fee to be determined by the authorized officer: *Provided, however,* That this section shall not apply where payment for such road use to another permittee is required under §§ 244.70 to 244.92.

§ 244.85 *Bond in connection with existing roads.* An applicant for an emergency access permit to use an existing Government road which is under the administrative jurisdiction of the Bureau will be required, for the protection of such existing road, to execute a bond on Form 4-414 (a) in an amount to be determined by the authorized officer but in no event less than five hundred dollars (\$500) per mile or fraction thereof, conditioned on compliance with §§ 244.70 to 244.92 and the terms and conditions of the permit.

§ 244.86 *Approval of permit.* Upon the applicant's compliance with the appropriate provisions of §§ 244.70 to 244.92 and if it is determined that the approval of the application will be in the public interest, the authorized officer may issue an appropriate permit, upon Form 4-1213.

§ 244.87 *Terms and conditions of permit.* (a) As to all emergency access permits: Every permittee shall agree:

(1) To comply with the applicable regulations in effect as of the time when the permit is issued.

(2) Not to cut, remove, or destroy any timber not previously purchased on the right-of-way without having first obtained specific authority from the authorized officer and making payment therefor.

(3) To take adequate precaution to prevent and suppress forest, brush, and grass fires; to endeavor with all available personnel to suppress any fire originating on or threatening the right-of-way; to do no burning on or near the right-of-

way without State permit during the seasons that permits are required but in any event to set no fire on or near the right-of-way that will result in damage to any natural resource or improvement.

(4) To submit to arbitration proceedings and to be bound by the resulting arbitral awards, pursuant to §§ 244.80 to 244.82.

(5) In the event that the United States acquires by purchase or eminent domain the land or any interest therein, over which there passes a road which the United States has acquired the right to use under § 244.76, to waive compensation for the value of the road, equivalent to the proportion that the amount the United States has contributed bears to the total actual cost of construction of the road. Such contribution shall include any investment in or amortization of the cost of such road, or both, as the case may be, made by the United States or a licensee either by way of direct expenditures upon such road, or by way of payment by the United States or a licensee to the permittee, or by way of allowance made by the United States to the permittee in any timber sales contract for such amortization or capital investment.

(6) To construct all roads and other improvements as described in the application for the permit, except as the authorized officer may authorize modification or abandonment of any such proposed construction.

(7) To use the permit and right-of-way afforded subject to all valid existing rights, to such additional rights-of-way as may be granted under §§ 244.70 to 244.92, to a reservation of rights-of-way for ditches and canals constructed under authority of the United States.

(8) In the exercise of the rights granted by the permit, not to discriminate against any employee or applicant for employment because of race, creed, color or national origin, and to require an identical provision to be included in all subcontracts.

(9) Except as the authorized officer may otherwise permit or direct, to clean up and remove from the road and right-of-way within six months after the expiration or other termination of the permit, all debris, refuse, and waste material which may have resulted from his operations and use of said road; to repair all damage to said road resulting directly or indirectly from his use thereof; and to remove therefrom all structures, timbers, and other objects that may have been installed or placed thereon by him in connection with said operations or use: *Provided, however,* That the road and all usable road improvements shall be left in place.

(b) As to emergency access permits for the use of an existing road: In addition, every permittee to whom an emergency access permit is issued for the use of an existing road is required to agree:

(1) To maintain such a road in an adequate and satisfactory condition or to arrange therefor with the other users of the road. In the absence of satisfactory performance, the authorized officer may have such maintenance work performed as may be necessary in his judgment, determine the proportionate share allocable to each user, and collect the cost

thereof from the parties or the sureties on the bonds furnished by said parties.

(2) Upon the expiration or other termination of his right to its use, to leave said road and right-of-way in at least as good a condition as existed prior to the commencement of his use.

§ 244.88 *Assignment of permit.* Any proposed assignment of an emergency access permit must be submitted in duplicate, within 90 days after the date of its execution, to the District Forester, accompanied by the same showing and undertaking by the assignee as is required of an applicant by §§ 244.75 and 244.76; and must be supported by a stipulation that the assignee agrees to comply with and be bound by the terms and conditions of the permit and the applicable regulations of the Department of the Interior in force as of the date of such approval of the assignment.

§ 244.89 *Causes for termination, of permittee's rights.* (a) The authorized officer in his discretion may elect upon 30 days' notice to terminate any permit or right-of-way issued under §§ 244.70 to 244.92 if:

(1) In connection with the application made therefor, the applicant represented any material fact knowing the same to be false, or made such representation in reckless disregard of the truth; or

(2) A permittee, subsequent to the issuance of a permit or right-of-way to him, misrepresents any material fact to the Bureau, in accordance with any requirement of such permit or knowing such representation to be false, or make such representation in reckless disregard of the truth.

(b) The authorized officer, in his discretion may elect to terminate any permit issued under §§ 244.70 to 244.92, if the permittee shall fail to comply with any of the provisions of such regulations or make default in the performance or observation of any of the conditions of the permit, and such failure or default shall continue for 10 days after service of written notice thereof.

(c) Notice of such termination shall be served personally or by registered mail upon the permittee, shall specify the misrepresentation, failure or default involved, and shall be final, subject, however, to the permittee's right of appeal.

(d) Termination of the permit and of the right-of-way under this section shall not operate to terminate any right granted to the United States pursuant to §§ 244.70 to 244.92, nor shall it affect the right of the permittee, after the termination of his permit and right-of-way to receive compensation and to establish road operating rules with respect to roads controlled by him which the United States has the right to use and to permit its licensees to use; nor shall it relieve the permittee of his duty under §§ 244.70 to 244.92 to submit to and be bound by arbitration pursuant to §§ 244.79 to 244.81.

§ 244.90 *Remedies for violations by licensee.* (a) No licensee of the United States will be authorized to use the roads of a permittee except under the terms of a timber sale contract which will require the licensee to comply with all the applicable provisions of §§ 244.70 to 244.92, and any agreements or awards

made pursuant thereto. If a licensee fails to comply with the regulations, agreements, or awards, the authorized officer will take such action as may be appropriate under the provisions of the timber sale contract.

(b) A permittee who believes that a licensee is violating the provisions of such a timber sale contract pertaining to use of the permittee's roads, rights-of-way, or lands, may petition the authorized officer, setting forth the grounds for his belief, to take such action against the licensee as may be appropriate under the contract. In such event the permittee shall be bound by the decision of the authorized officer subject, however, to a right of appeal pursuant to § 244.92 and subject, further, to the general provisions of law respecting review of administrative determinations. In the alternative a permittee who believes that a licensee has violated the terms of the timber sale contract respecting the use of the permittee's roads may proceed against the licensee in any court of competent jurisdiction to obtain such relief as may be appropriate in the premises.

§ 244.91 *Disposition of property on termination of permit.* Upon the expiration or other termination of the permittee's rights, in the absence of an agreement to the contrary, the permittee will be allowed six months in which to remove or otherwise dispose of all property or improvements, other than the road and usable improvements to the road, placed by him on the right-of-way, but if not removed within this period, all such property and improvements shall become the property of the United States.

§ 244.92 *Appeals.* An appeal, pursuant to the Rules of Practice, Part 221 of this chapter, may be taken from any final decision to the Director, Bureau of Land Management, and, from the latter's decision to the Secretary of the Interior.

APPENDIX

FORMS¹

Reference should be made to the appropriate section of the regulations to determine when each of the forms is required.

Forms Nos. 2, 4, 6, 7, 9, and 10 may be signed by any officer or employee of the company who is authorized to sign them. However, if they are executed by a person other than the President, they must be accompanied by a certified copy of the minutes of the Board of Directors meeting or other document authorizing such signature unless such certified copy has already been filed in the case.

Forms 1 and 2 to be placed on maps. See section 244.6 (a) (7).

ENGINEER'S STATEMENT

(Form 1)

_____ states he is by
(Name of engineer)
occupation a _____ em-
(Type of engineer)

ployed by the _____ to
(Company)

make the survey of the _____,
(Kind of works)
as described and shown on this map; that the survey of said works was made by him (or under his supervision) and under authority, commencing on the _____ day of _____ 19____, and ending on the _____ day of _____ 19____; and that such survey is accurately represented upon this map.

(Engineer)

APPLICANT'S CERTIFICATE

(Form 2)

This is to certify that _____

(Engineer)

who subscribed the statement hereon is the person employed by the undersigned applicant to prepare this map, which has been adopted by the applicant as the approximate final location of the works thereby shown; and that this map is filed as a part of the complete application, and in order that the applicant may obtain the benefits of _____; and I further certify that the

(Cite statute)

right-of-way herein described is desired for _____.

(State purpose)

[SEAL]

(Signature of applicant)

(Title)

Attest:

(Company)

FORMS FOR PLANT SITES ONLY

See sections 244.42 (a) and 244.66.

(Form 3)

_____ states that
(Name of engineer)

he is the chief engineer of (or the person employed by) the _____

(Company)

under whose supervision the survey was made of the grounds selected by the company for structures for a plant site under the act of Congress approved February 15, 1901 (February 1, 1905, act of March 4, 1911, as amended, or act of February 25, 1920, as amended), said grounds (here describe as required by regulation, sec. 244.31); that the accompanying drawing correctly represents the locations of the said structures; and that in his belief the structures represented are actually and to their entire extent required for the necessary uses contemplated by the said Act.

(Signature of engineer)

(Form 4)

I, _____, do hereby certify
(Applicant) (Company officer)

that I am the _____ of the _____
(Title)

_____; that the survey of the struc-
(Company)

tures represented on the accompanying drawing was made under authority and by direction of the company, and under the supervision of _____, its chief engineer (or person employed in the premises), whose statement precedes this certificate; that the survey as represented on the accompanying drawing actually represents the structures required (here describe as required by regulation, sec. 244.30), for plant site under the act of Congress approved February 15, 1901 (February 1, 1905, March 4, 1911, as amended, or February 25, 1920, as amended); and that the company, by resolution of its board of directors, passed on the _____ day of _____ 19____, directed the proper officers to present the said drawing for approval in order that the company may obtain the use of the grounds required for said structures, under the provisions of said act.

[SEAL]

(Signature of applicant)

(Title)

(Company)

Attest:

¹Where necessary, these forms should be modified so as to be appropriate to the applicant (corporation, association, or individual), to the act invoked, and to the nature of the project.

FORMS FOR PROOF OF CONSTRUCTION

See section 244.15.

(Form 5)

----- states that he is
(Name of engineer)
the chief engineer (or was employed to supervise or check the construction of the canals, ditches, laterals, and reservoirs) for the -----; that said (canals, (Company)
ditches, laterals, and reservoirs) have been constructed under his supervision; that construction was commenced on the ----- day of ----- 19-----, and completed on the ----- day of ----- 19-----; that the constructed (canals, ditches, laterals, and reservoirs) as aforesaid, conform to the map which received the approval of the Department of the Interior on the ----- day of ----- 19-----.

(Signature of engineer)

(Form 6)

I, ----- certify
(Applicant) (Company officer)
that I am the -----;
(Title) (Company)
that the (canals, ditches, laterals, and reservoirs) were actually constructed as set forth in the accompanying statement of -----, chief engineer (or the person employed by the company in the promises), and on the exact location represented on the map approved by the Department of the Interior on the ----- day of ----- 19-----; and that the company has in all things complied with the requirements of the act of (March 3, 1891) granting rights-of-way for (canals, ditches, laterals, and reservoirs) through public lands of the United States.

[SEAL]

(Signature of applicant)

(Title)

(Company)

Attest:

FORMS FOR RESERVOIR DECLARATORY STATEMENT

(Form 7)

See section 244.30.

Res. D. S.

No. -----

Land Office at -----,
----- 19-----I, -----
(Applicant) (Company officer)of -----
(Post office address)do hereby certify that I am -----
(Title)of the -----, and on behalf of
(Company)

said company, and under its authority, do hereby apply for the reservation of land in ----- county, State of -----, for the construction and use of a reservoir for furnishing water for livestock under the provisions of the act of January 13, 1897 (29 Stat. 484; 43 U. S. C. 952). The location of said reservoir and of the land necessary for its use, is as follows: -----¹
of section ----- in township -----
of range ----- M., containing ----- acres.

To the best of my knowledge and belief the said land is not occupied or otherwise claimed, and is not mineral or otherwise reserved. The said reservoir is to be used in connection with -----²

(Business of applicant)

The land owned or claimed by the applicant within the vicinity (within 3 miles) of the said reservoir is as follows:

(Describe by legal subdivision, section, township, and range)

No part of the land to be reserved under this application is or will be fenced unless written permission is first obtained from the Department of the Interior; the same will be kept open to the free use of any person desiring to water animals of any kind; the land will not be used for any purpose except the watering of stock; and the land is not, by reason of its proximity to other lands reserved for reservoirs, excluded from reservation by the regulations and rulings of the Department of the Interior.

The water of said reservoir will cover an area of ----- acres in ----- of section ----- in township -----, of range ----- of said lands; the capacity of the reservoir will be ----- gallons, and the dam will be ----- feet high. The source of the water for said reservoir is -----

(Type and location

-----, and there are
of spring, stream, runoff, etc.)
no streams or springs within 2 miles of the land to be reserved except as follows:

(Insert names or other identification)

The applicant has filed no other declaratory statements under this act, except as follows:

No. ----- land office, area
to be reserved ----- acres.

No. ----- land office, area
to be reserved ----- acres.

No. ----- land office, area
to be reserved ----- acres.

No. ----- land office, area
to be reserved ----- acres.

Total, ----- acres, of which Nos. -----
are located in said county.

It is the bona fide purpose and intention of this applicant to construct and complete said reservoir and maintain the same in accordance with the provisions of said Act of Congress and such regulations as are or may be prescribed thereunder.

[SEAL]

(Signature of applicant)

(Title)

(Company)

Attest:

Land Office at -----

I, -----, manager of the land office, do hereby certify that the foregoing application is for the reservation of lands subject thereto under the provisions of the Act of January 13, 1897; that there is no prior valid adverse right to the same; and that the land is not, by reason of its proximity to other lands reserved for reservoirs, excluded from reservation by the regulations and rulings of the Department of the Interior.

Fees, \$----- paid.

(Manager)

¹ Description should be in terms of smallest legal subdivision (40-acre tract or lot).

² Statement of business should include full information concerning the extent to which applicant is engaged in grazing, breeding, driving, or transporting livestock; the number and kinds of such stock; the place where they are being bred or grazed; whether within an enclosure or upon unenclosed lands; and the points from which and to which they are being driven or transported.

(Form 8)

See section 244.33.

----- says that he is the
(Chief engineer)

person who was employed to make the survey of a reservoir covering an area of ----- acres, the initial point of the survey being -----, said

(Describe as required by § 244.33)
reservoir having been constructed upon the -----¹ of section -----, township -----, range ----- M., as proposed by reservoir declaratory statement No. -----, which was filed in the local land office at -----, under the provisions of the
(City)

act of January 13, 1897 (29 Stat. 484; 43 U. S. C. 952); that the said survey was made on the ----- day of ----- 19-----; that the dam and all necessary works have been constructed in a substantial manner; that the reservoir has a capacity of ----- gallons of water.

(Signature of engineer)

(Form 9)

See section 244.33.

I, -----, do
(Applicant) (Company officer)

hereby certify that I am the -----
(Title)

of the ----- which filed (or
(Company)

that I am the person who filed) reservoir declaratory statement No. ----- in the local land office at -----; that the proposed reservoir has been constructed upon the -----¹ of section -----, township -----, range ----- M., covering an area of ----- acres; that the dam and all necessary works have been constructed in a substantial manner in good faith in order that the reservoir may be used and maintained for the purpose, and in the manner prescribed by the said act of January 13, 1897 (29 Stat. 484; 43 U. S. C. 752), the provisions of which have been and will be complied with in all respects.

[SEAL]

(Signature of applicant)

(Title)

(Company)

Attest:

(Form 10)

See section 244.35.

----- says
(Applicant) (Company officer)

that he is the ----- of the -----
(Title)

----- which filed (or that he is the
(Company)

person who filed) reservoir declaratory statement No. ----- in the local land office at -----; that the reservoir con-
(City)

structed in pursuance thereof, as heretofore certified has been kept in repair; that water has been kept therein to the extent of not less than ----- gallons during the entire calendar year of 19-----; that neither the reservoir nor any part of the land reserved for use in connection therewith is or has been fenced during said year; and that the said company (or person) has in all respects complied with the provisions of the act of January 13, 1897 (29 Stat. 484; 43 U. S. C. 952).

[SEAL]

(Signature of applicant)

(Title)

(Company)

Attest:

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

(Circular 1916)

PART 258—SPECIAL LAND-USE PERMITS FOR PUBLIC LANDS WITHIN OR OUTSIDE OF GRAZING DISTRICTS

IN GENERAL

- Sec.
258.1 Statutory authority.
258.2 Policy; use of lands.
258.3 Qualifications of applicants.
258.4 Execution of applications.
258.5 Fees.
258.6 Occupancy of land prior to permit.
258.7 Term of permit; renewal.
258.8 Rental.
258.9 Permit area; description and marking of land.
258.10 Land not segregated.
258.11 Timber.
258.12 Special stipulations in permit.
258.13 Assignment of permit.
258.14 Removal of improvements.
258.15 Refund.

SPECIAL LAND-USE PERMITS FOR ADVERTISING DISPLAYS ON THE PUBLIC LANDS

- 258.16 Advertising displays on public lands without permits unauthorized.
258.17 Words "advertising displays" defined.
258.18 Permittees.
258.19 Applications for permits.
258.20 Fees and charges.
258.21 Permits.
258.22 Renewal of permit.
258.23 Identification of authorized advertising displays.
258.24 Unauthorized advertising displays.
258.25 Restrictions on advertising displays.
258.26 Special land-use permit regulations.

AUTHORITY: §§ 258.1 to 258.26 issued under R. S. 2478; 43 U. S. C. 1201.

IN GENERAL

§ 258.1 *Statutory authority.* Authority to issue special land-use permits for public lands within or outside of grazing districts for purposes other than grazing is found in R. S. 453 (43 U. S. C. 2), which provides that the Director, Bureau of Land Management, shall perform, under the direction of the Secretary of the Interior, all executive duties appertaining to the surveying and sale of the public lands of the United States, or in anywise regarding such public lands.

§ 258.2 *Policy; use of lands.* (a) It is the policy of the Secretary of the Interior, in the administration of the public lands within or outside of grazing districts, to permit, where practical, the beneficial use thereof for special purposes not specifically provided for by the existing public land laws. Permits for such special use will not be issued, however, in any case where the provisions of the existing public land laws may be invoked. For example, they will not be issued to authorize the use of the public lands for home, cabin, camp, health, convalescent, recrea-

tional, or business sites for which leases may be issued under the act of June 1, 1938 (52 Stat. 609; 43 U. S. C. 682a), or for the development of minerals, or for the securing of rights-of-way obtainable under existing laws, or for any use directly or indirectly relating to grazing.

(b) The contemplated use must not be in conflict with any Federal or State laws.

(c) An applicant must state in his application the use to which he intends to put the lands, and he will not be permitted to devote them to any other use, unless he secures an additional permit.

§ 258.3 *Qualifications of applicants.* Any person, over 21 years of age, who is a citizen of the United States, or who has declared his intention to become a citizen, or any group or association composed of such persons, or any corporation organized under the laws of the United States or of any State or Territory thereof, authorized to conduct business in the State in which the land involved is situated, or any agency of the Federal Government, or any State or political subdivision thereof, may file such application.

§ 258.4 *Execution of applications.* Applications must be executed in duplicate on Form 4-972.¹ The application must be filed in the proper land office in the State or Territory, or for lands in a State in which there is no land office, shall be filed with the Bureau of Land Management, Washington 25, D. C., except the application for land in North or South Dakota shall be filed in the land office at Billings, Montana; application for land in Nebraska or Kansas shall be filed in the land office at Cheyenne, Wyoming; and for lands in Oklahoma in the land office at Santa Fe, New Mexico. Application for O & C land in Oregon shall be filed in the appropriate district forestry office.

§ 258.5 *Fees.* A fee of \$5 will be required with each application, except applications by agencies of the Federal Government and agencies of the States and political subdivisions thereof. The fee paid by an applicant will be returned if the application is rejected.

§ 258.6 *Occupancy of land prior to permit.* An application for special land-use permit will not entitle the applicant to occupy the land prior to the issuance of a permit. Any occupation of the land prior to the issuance of a permit, or use thereafter except in accordance with the terms of the permit, is hereby prohibited.

§ 258.7 *Term of permit; renewal.* A special land-use permit may be issued for a period of not exceeding 5 years and will be revocable for any breach of condition thereof. It also will be revocable in the discretion of the authorized officer, at any time, upon notice, if in his judgment the lands should be devoted to another use. Upon the expiration of a permit, if the permittee has complied with the provisions thereof, he will be considered the preferred applicant for a new permit under regulations then in force, provided no superior claim to the land has been asserted in the meantime.

§ 258.8 *Rental.* (a) Each permittee will be required to pay to the Bureau of Land Management, in advance, the annual rental fixed by the permit, which shall be based upon the value of the land for the use to which it is to be put. The annual rental may be adjusted from year to year, in the discretion of the authorized officer. In no case, however, will the minimum rental charge be fixed at less than \$5 per annum.

(b) Special land-use permits applied for by agencies of the Federal Government and agencies of States and political subdivisions thereof may, in the discretion of the authorized officer, be issued without rental charge.

§ 258.9 *Permit area; description and marking of land.* A special land-use permit will not be issued for more than 5 acres, except upon a showing of special need, satisfactory to the authorized officer. The land must be vacant public land, or public land withdrawn or reserved under authority of the Secretary of the Interior, surveyed or unsurveyed. If surveyed, the land must be described in the application by legal subdivisions of the public land surveys. The smallest legal subdivision in a quarter-quarter section or fractional lot that will be considered is 2½ acres. Where, however, a fractional lot contains less than 2½ acres, a permit may be issued for the entire lot. If unsurveyed, the land must be described by metes and bounds, with substantial monuments at each corner and with a tie to a nearby corner of the public land surveys, if fea-

¹Filed as part of the original document. Copies may be obtained on request from any land office or from the Bureau of Land Management, Washington 25, D. C.

ible. If such tie is not feasible, the location must be otherwise identified with certainty, preferably with reference to prominent topographic or cultural features. The land must be taken in rectangular form, if at all practicable.

§ 258.10 Land not segregated. A special land-use permit will be subject to valid adverse claims theretofore or thereafter acquired and to the filing of applications and the acquisition of rights by others, as follows:

(a) Applications and selections may be made under nonmineral laws, subject to the revocation of the permit.

(b) The mineral contents in the land shall at all times be subject to prospecting, location, developing, mining, entering, leasing, or patenting under the provisions of the applicable general mining laws or mineral leasing laws.

(c) The special land-use permit shall be subject to any permit issued under the act of June 8, 1906 (34 Stat. 225; 16 U. S. C. 431-433), to explore for objects of antiquity on the public lands.

(d) The special land-use permit shall not restrict the acquisition by grant or permit of rights-of-way under existing laws.

§ 258.11 Timber. A special land-use permit will not entitle an applicant to cut and remove timber from the land. If he wishes to cut and remove the timber, application therefor must be made in accordance with the governing laws and regulations.

§ 258.12 Special stipulations in permit. If it is found that unusual conditions or the protection of the public interests require the insertion of special stipulations in the permit, the applicant will be advised thereof prior to its issuance.

§ 258.13 Assignment of permit. A permittee will not be allowed to assign a permit or any interest therein without the approval of the authorized officer. Proposed assignments must be supported by a statement signed by the assignee agreeing to be bound by the provisions of the permit, if the assignment is approved, and a showing that the assignee possesses the qualifications set out in § 258.3.

§ 258.14 Removal of improvements. The permittee, if all rental charges due the Government have been paid, may remove within such reasonable time as may be allowed by the authorized officer after the revocation or expiration of a permit, all structures which have been placed upon the premises by him or his assignor. If the permittee fails to make payment of the rental charges within 30 days from receipt of notice requiring payment, or upon revocation or expiration of the permit fails to remove the structures within the time required by the authorized officer, the structures will become the property of the United States.

§ 258.15 Refund. No refund of rentals properly paid will be made because of the revocation of the permit, at any time, or because of interference with or prevention of the exercise of the privileges conferred by the permit by mineral

prospectors, locators, licensees, permittees, lessees, or patentees, or by permittees under the act of June 8, 1906 (34 Stat. 225; 16 U. S. C. 431-433), or by grantees or permittees of rights-of-way under existing laws.

SPECIAL LAND-USE PERMITS FOR ADVERTISING DISPLAYS ON THE PUBLIC LANDS

§ 258.16 Advertising displays on public lands without permits unauthorized. The erection or maintenance on the public lands of advertising displays, without permission, is unauthorized by law. Any person erecting or maintaining one or more advertising displays on the public lands, except under authority of a permit issued by the authorized officer as hereinafter provided for, shall be deemed a trespasser.

§ 258.17 Words "advertising displays" defined. The words "advertising displays," as used in the regulations in this part shall include structures of any kind with or without lighting effects erected or maintained for outdoor advertising purposes, upon which any poster, bill, printing, painting, or other advertisement of any kind whatsoever, including statuary, may be placed for advertising purposes, but shall not include:

(a) Official notices or advertisements posted by or under the direction of any public or court officer, in the performance of his official duties.

(b) Danger, precautionary, and informative signs erected by officials of the Federal Government, or officials of the State or of any subdivision thereof, or of any nonprofit organization in the State, relating to the premises, or warning of the conditions of travel on a highway, or of forest fires, or road symbols, or speed limits.

(c) Highway markers or signs relating to any city, town, village, or historic place or shrine.

(d) Notice of any railroad, bridge, ferry, or other transportation or transmission company, necessary for the direction or safety of the public.

(e) Official signs, notices, or symbols for the information of aviators, as to location, direction, or landings, and conditions affecting safety in aviation.

(f) Signs containing 16 square feet or less bearing an announcement of any town, village or city, or nonprofit association, or chamber of commerce, advertising itself, or local industries, buildings, meetings, or attractions, but not advertising any particular individual or corporation engaged in business for a profit, providing not more than one sign bearing the same or similar announcement shall be placed on any one approach to the city or village involved.

(g) Signs erected by Red Cross authorities relating to Red Cross Emergency Stations.

(h) Signs advertising bona fide agricultural county, district, or State fairs.

§ 258.18 Permittees. Permits will be issued only to the owners, operators, or proprietors of business establishments or their agents advertising their own business and products sold on the premises, situated not more than 30 miles, measured by highway travel, from the advertising displays.

§ 258.19 Applications for permits.

(a) Applications for permits must be executed in duplicate on Form 4-972b.^{*} Each application must contain a sufficient recital of the facts relative to the advertising display, including its size, and lighting effect, if any, to enable its substantial production from the description. A sketch or photograph showing the display, and a photograph showing the location on which it is to be placed, should be furnished. The application should identify the highway or other medium of travel along which it is proposed to erect the display and should give the distance and direction of the site, measured by highway travel, to the nearest cities or towns. If the land on which it is desired to place the display has been surveyed, its description should be given in terms of the public land surveys. The application must be filed in the proper land office in the State or Territory, or for lands in a State in which there is no land office, shall be filed with the Bureau of Land Management, Washington 25, D. C., except the applications for lands in North or South Dakota shall be filed in the land office at Billings, Montana; applications for lands in Nebraska or Kansas shall be filed in the land office at Cheyenne, Wyoming; and for lands in Oklahoma in the land office at Santa Fe, New Mexico. Applications for O & C lands in Oregon must be filed in the appropriate district forestry office.

(b) Where public lands in more than one land district are involved, a separate application covering the lands in each district must be filed.

§ 258.20 Fees and charges. (a) A fee of \$5 must accompany each application for a permit to erect one or more advertising displays. The fee will be returned, if the application is rejected.

(b) The initial and annual charges for advertising displays shall be as follows: Not less than 20 cents per annum for each square foot of sign surface, not less than \$1 per annum for each display and not less than \$5 per annum for one or more displays authorized by the same permit. The amount of the charge, subject to such minima, will be fixed by the authorized officer. Due consideration will be given in fixing the amounts to all pertinent facts and circumstances, including the charges made for corresponding privileges on privately owned lands similarly situated.

(c) When conflicting applications are filed, due consideration will be given to the showing of each applicant and such action will be taken as is deemed to be warranted by the facts and circumstances.

(d) The annual charges must be paid each year in advance.

(e) Where charges are paid in advance and a permit is canceled before the expiration of the period for which it was issued, a proportionate refund of the charges will be made.

^{*} Filed as part of the original document. Copies may be obtained on request from any land office or from the Bureau of Land Management, Washington, D. C.

§ 258.21 *Permits.* Special-use permits to erect and maintain advertising displays on the public lands may be issued, by or under authority of the authorized officer, and in his discretion, on Form 4-972c, for periods of not exceeding 5 years, in accordance with §§ 258.16 to 258.26. The permits will be revocable in the discretion of the authorized officer at any time.

§ 258.22 *Renewal of permit.* A permit issued in accordance with §§ 258.16 to 258.26 may be renewed, in the discretion of the authorized officer, upon the filing of an application for renewal not more than 6 months nor less than 60 days prior to its expiration.

§ 258.23 *Identification of authorized advertising displays.* Each advertising display erected or maintained under a permit issued pursuant to §§ 258.16 to 258.26, should, for convenient identification, have the serial number of such permit marked or painted thereon.

§ 258.24 *Unauthorized advertising displays.* (a) Persons who heretofore have erected advertising displays on the public lands must either obtain permits to continue such displays, if authorized by §§ 258.16 to 258.26, or must remove the displays, as promptly as possible.

(b) Where an unauthorized advertising display on the public lands is found, the United States will take appropriate steps to secure its removal, unless the owner obtains a permit. The owner, if known, will be given notice in writing of the requirements. Displays erected prior to October 13, 1941, must be removed within 6 months from and after the date of the approval of §§ 258.16 to 258.26, unless application for a permit is made within that period. Displays erected prior to October 13, 1941, for which applications for permits are made but for which permits are refused, and unauthorized displays thereafter erected must be removed within such reasonable time as may be fixed by the regional administrator. If the owner fails to remove the display within the time allowed, it may be removed by the United States and the owner will be held liable to the

United States for expenses incurred in removing it. If the owner is unknown, or cannot be found, the display may be removed by the United States, without notice. A registered letter addressed to the owner at his last known place of residence, if returned unclaimed, will be considered sufficient service of notice.

§ 258.25 *Restrictions on advertising displays.* (a) No advertising display shall be permitted which, in the opinion of the authorized officer, would mar the landscape, hide road intersections or crossings, or which, in his opinion is otherwise objectionable.

(b) No advertising display shall be affixed to, or painted on, any tree or rock situated on the public lands, or on any other natural object on such lands.

(c) No advertising display shall be erected more than 30 miles, measured by highway travel from the point where the service advertised is rendered, the merchandise is sold, or the business advertised is located.

(d) All advertising displays shall conform to the applicable State laws and local ordinances or regulations.

(e) No advertising display shall be erected within 1,000 feet of any other such display on public or privately owned lands, and not more than one advertising display, or sign, per mile, advertising one concern, establishment, or product, shall be permitted, in the absence of necessity, satisfactory to the authorized officer.

(f) Serial signs (any series of small signs intended to be read in sequence which individually do not give the complete advertisement) are prohibited.

(g) Signs shall not be permitted within 15 miles of entrances to national parks or national monuments, measured by highway travel, unless approved by the National Park Service.

§ 258.26 *Special land-use permit regulations.* All the provisions of the special land-use permit regulations (§§ 258.1 to 258.15), not inconsistent with §§ 258.16 to 258.25, inclusive, are hereby extended to and made applicable to special land-use permits for advertising displays.

Copies to	Each AA	25
	Each SO	10
	Each LO	25
	Each DFC	5
	Each DGO	5

All Regional and Field Solicitors 1 ea.

BFS	10
ESO	10
Wash. Staff Officers	5 each
Asso. Solicitor Parriott	30
Miss Williams GS Room 3219	20

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1917]

PART 199—MINERALS SUBJECT TO LEASE UNDER SPECIAL LAWS

LEASES FOR MINERALS IN LANDS WITHDRAWN FOR RECLAMATION PURPOSES WITHIN LAKE MEAD RECREATION AREA¹

Section 199.65 is redesignated § 199.81 and new §§ 199.70 to 199.80 are issued as follows:

- Sec.
199.70 Authority to lease; description of area.
199.71 Other regulations applicable.
199.72 Leasing units.
199.73 Royalties, rentals and minimum royalties.
199.74 Qualifications of applicants.
199.75 Applications.
199.76 Term of lease.
199.77 Lease terms and conditions.
199.78 Excepted areas.
199.79 Leases by competitive bidding.
199.80 Disposal of materials.
199.81 Distribution of proceeds.

AUTHORITY: §§ 199.70 to 199.81 issued under sec. 10, 53 Stat. 1196, as amended; 43 U. S. C. 387.

§ 199.70 *Authority to lease; description of area.* (a) Section 10 of the act of August 4, 1939 (53 Stat. 1196) as amended August 18, 1950 (64 Stat. 463; 43 U. S. C. 387), inter alia, authorizes the Secretary of the Interior in his discretion to permit the removal of sand, gravel and other minerals from lands and interests in lands withdrawn or acquired for reclamation purposes and to grant leases and licenses for periods not to exceed 50 years affecting such withdrawn or acquired lands.

(b) The area subject to the regulations in this part is that area surrounding Lake Mead in Nevada and Arizona with its greatest extension from north to south from the south boundary of Township 14 South in parts of Ranges 68 and 69 East, Mount Diablo Meridian to the south boundary of Township 21 North, Range 21 West of the Gila and Salt River Meridian and the center of Range 66 and part of 65 East, Township 32 South, Mount Diablo Meridian and its greatest extension east and west from the approximate center of Township 32 and parts of Townships 31 and 33 North, Range 8 West, Gila and Salt

River Meridian to within Townships 21, 22 and 23 South, Range 63 East, Mount Diablo Meridian. The exact description of the lands included in the area may be obtained from a map entitled "Lake Mead National Recreation Area, Arizona-Nevada, (NRA—L. M. 2291), Revised March 1955," copies of which are on file in the office of the Superintendent, Lake Mead National Recreation Area, Boulder City, Nevada and in the land offices of the Bureau of Land Management at Reno, Nevada and Phoenix, Arizona.

§ 199.71 *Other regulations applicable.* Except as otherwise specifically provided in §§ 199.70 to 199.80, inclusive, the regulations contained in Parts 191 and 193 of this title and in 30 CFR Part 211, shall govern the leasing of mineral deposits other than coal, oil, gas, phosphate, potassium and sodium, the excepted minerals being governed by regulations issued under the Acts of February 25, 1920 (41 Stat. 437; 30 U. S. C. 181) as amended, and February 27, 1927 (44 Stat. 1057; 30 U. S. C. 281), as amended, to which Parts 192 to 198, inclusive, of this title, are specifically applicable.

§ 199.72 *Leasing units.* Leasing units may not exceed 640 acres consisting of legal subdivisions of the lands if surveyed, in reasonably compact form or, if the lands are not surveyed, of a square or rectangular area with north and south and east and west boundaries so as to approximate legal subdivisions described by metes and bounds connected to a corner of the public survey by courses and distances. The officer issuing any lease may prescribe a lesser area for any mineral deposit if the Geological Survey reports that such lesser area is adequate for an economic mining operation.

§ 199.73 *Royalties, rentals and minimum royalties.* (a) The rate of royalty shall be fixed prior to the issuance of the lease but in no event shall it be less than 2 percent of the amount or value of the minerals mined.

(b) Rentals shall not be less than 25 cents per acre payable annually until production is obtained.

(c) After production is obtained the lessee must pay a minimum royalty of \$1 per acre.

§ 199.74 *Qualifications of applicants.* Leases may issue to (a) citizens of the United States, (b) associations of such citizens and (c) corporations organized under the laws of the United States or of any State or Territory thereof.

§ 199.75 *Applications.* An applicant must give his name and address and citizenship qualifications in the manner prescribed in § 193.11 of this title, describe the land for which a lease is desired in terms of legal subdivisions if surveyed, otherwise by metes and bounds and state the kind of mineral for which a lease is desired. The applicant must also give the reasons why he believes the mineral sought to be leased can be developed in the land in paying quantities and furnish such facts as are available to him respecting the known occurrence of the mineral in the land, the character of such occurrence and its probable worth as evidencing the existence of a workable deposit of such mineral. Each application must be accompanied by a filing fee of \$10 which will not be returnable.

§ 199.76 *Term of lease.* Leases will be issued for a period of 5 years and any lease in good standing will be subject to renewal for successive 5-year terms on such reasonable terms as may be prescribed by the Secretary of the Interior at the time of any such renewal upon application filed within 90 days prior to the termination of the lease term for which renewal is sought unless otherwise provided by law or unless the land has been restored from the withdrawal at the expiration of such term.

§ 199.77 *Lease terms and conditions.* Each lease will contain provisions for the following: Diligent development of the leased property except when operations are interrupted by strikes, the elements, or casualties not attributable to the lessee unless operations are sus-

¹ Form of lease filed as part of the original document.

Published in 20 F. R. August 10, 1955

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	Each SO	10	ESO	10
	Each LO	25	Wash. Staff Officers	5 each
	Each DFO	5	Asso. Solicitor Parriott	30
	Each DGO	5	Miss Williams GS Room 3219	20
All Regional and Field Solicitors			1 ea.	

pendent upon a showing that the lease cannot be operated except at a loss because of unfavorable market conditions; occupation and use of the surface of the claim shall be restricted to such as is reasonably necessary to the exploration, development and extraction of the leased minerals. No vegetation will be destroyed or disturbed except where necessary to mine and remove the minerals; lessee shall not conduct operations in such a manner as to contaminate the waters of Lake Mead or Lake Mohave through dumping, drainage or otherwise. Lessee shall not erect any structures or open or construct roads or vehicle trails without first obtaining written permission from an authorized officer or employee of the National Park Service. The permit for a road or trail may be conditioned upon the permittee's maintaining the road or trail in passable condition, satisfactory to the officer in charge of the area so long as it is used by the permittee or his successor. The right is reserved to insert other terms in the lease when deemed necessary for the protection of the surface, its resources and use for recreation.

§ 199.78 *Excepted areas.* Minerals deposits and materials in the following areas shall not be open to disposal under the provisions of this part:

(1) All lands within 200 feet of the center line of any public road, or within 200 feet of any public utility including, but not limited to, electric transmission lines, telephone lines, pipe lines, and railroads.

(2) All land within the smallest legal subdivision of the public land surveys containing a spring or water hole, or within one-quarter of a mile thereof on unsurveyed public land.

(3) All land within 300 feet of Lake Mead or Lake Mohave, measured horizontally from the shore line at maximum water surface elevation and all lands within the area of supervision of the Bureau of Reclamation around Hoover and Davis Dams as shown on the map of the Lake Mead National Recreation Area, (NRA—L. M. 2291).

(4) All land within any developed and/or concentrated public use area or other area of outstanding recreation significance as designated by the Superintendent on the map, (NRA—L. M. 2291), of Lake Mead National Recreation Area which will be available for inspection in the office of the Superintendent.

§ 199.79 *Leases by competitive bidding.* The right is reserved to offer competitively a lease for any land applied for under this part if, in the judgment of the State Supervisor, there is evidence of a competitive interest in the land, or if the Geological Survey finds that the land contains a deposit in paying quantities of the mineral to be leased.

§ 199.80 *Disposal of materials.* Materials within the public lands covered by the regulations in this part which are not subject to lease hereunder shall be subject to disposal under the Materials Act of July 31, 1947 (61 Stat. 681; 43 U. S. C. 1185), as amended, subject to the conditions and limitations on occupancy and operations prescribed for leases in this part.

§ 199.81 *Distribution of proceeds.* All receipts derived from permits or leases issued under §§ 199.61 to 199.64 and 199.70 to 199.81 will be deposited by the Bureau of Land Management into the same funds or accounts in the Treasury for distribution in the same manner as prescribed as to national forest land for other national forest revenue by 16 U. S. C., sections 499, 500 and 501 and as prescribed as to reclamation land for other reclamation revenue by 43 U. S. C., section 394.

CLARENCE A. DAVIS,

Acting Secretary of the Interior.

AUGUST 4, 1955.

[F. R. Doc. 55-6455; Filed, Aug. 9, 1955;
8:46 a. m.]

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1919]

PART 200—MINERAL DEPOSITS IN ACQUIRED LANDS AND UNDER RIGHTS-OF-WAY

LEASING OF MINERAL DEPOSITS OTHER THAN OIL, GAS, OIL SHALE, COAL, PHOSPHATE, POTASSIUM, SODIUM AND SULPHUR IN CERTAIN ACQUIRED LANDS

Sections 200.31 to 200.36 are revised, and new §§ 200.37 to 200.50, inclusive, are added to this part, to read as follows:

LEASING OF MINERAL DEPOSITS OTHER THAN OIL, GAS, OIL SHALE, COAL, PHOSPHATE, POTASSIUM, SODIUM AND SULPHUR IN CERTAIN ACQUIRED LANDS

- Sec.
- 200.31 Authority.
- 200.32 Scope.
- 200.33 Outstanding prospecting permits and leases.
- 200.34 Filing and contents of application; filing fee; acreage limitation; qualifications; priority rights.
- 200.35 Terms and conditions of prospecting permits; rental; bonds.
- 200.36 Extension of permit.
- 200.37 Reward for discovery; preference right lease; bond.
- 200.38 Suspension of operations and production.
- 200.39 Mineral deposits subject to lease through competitive bidding; leasing units.
- 200.40 Application for lease by competitive bidding.
- 200.41 Notice of lease offer.
- 200.42 Bidding requirements; deposits.
- 200.43 Action by successful bidder.
- 200.44 Payments and reports.
- 200.45 Bonds.
- 200.46 Relinquishment of prospecting permit or lease.
- 200.47 Cancellation of prospecting permit or lease.
- 200.48 Transfers, including subleases.
- 200.49 Overriding royalties.
- 200.50 Fractional or future interest leases.

AUTHORITY: §§ 200.31 to 200.50 issued under R. S. 161, sec. 3, 63 Stat. 683; 5 U. S. C. 22, 30 U. S. C. 192c.

§ 200.31 *Authority.* (a) Section 402, Reorganization Plan No. 3 of 1946 (60 Stat. 1099) transferred the functions of the Secretary of Agriculture and the Department of Agriculture relative to the leasing or other disposal of minerals in certain acquired lands to the Secretary of the Interior.

(b) Section 3 of the act of September 1, 1949 (63 Stat. 683) authorized the issuance of mineral leases or permits for the exploration, development and utilization of minerals, other than those covered by the Mineral Leasing Act for Acquired Lands, in certain lands added to the Shasta National Forest by the act of March 19, 1948 (62 Stat. 83).

(c) Section 3 of the act of June 28, 1952 (66 Stat. 285), authorized the Secretary of the Interior to administer, in the manner prescribed by section 402 of Reorganization Plan No. 3 of 1946, mineral deposits other than those subject to the provisions of the Mineral Leasing Act for Acquired Lands, in that part of the Juan Jose Lobato Grant Numbered 164, which lies northerly of the Chama River (North Lobato tract) and in part of the Anton Chica Grant Numbered 29 (El Pueblo tract) as more particularly described in section 1 of the act of June 28, 1952.

§ 200.32 *Scope.* (a) Sections 200.31 through 200.50 apply to the leasing or other disposal of minerals other than oil, gas, oil shale, coal, phosphate, potassium, sodium and sulphur.

(1) In acquired lands under the act of March 4, 1917 (39 Stat. 1134, 1150; 16 U. S. C. 520), Title II of the National Industrial Recovery Act of June 16, 1933 (48 Stat. 195, 200, 202, 205; 40 U. S. C. 401, 403 (a) and 408), the 1935 Emergency Relief Appropriation Act of April 8, 1935 (49 Stat. 115, 118), section 55 of Title I of the act of August 24, 1935 (49 Stat. 750, 781), the act of July 22, 1937 (50 Stat. 522, 525, 530), as amended July 28, 1942 (56 Stat. 725; 7 U. S. C. 1011 (c) and 1018).

(2) In acquired lands, except Indian lands, under the jurisdiction of the bureau and other agencies of the Department of the Interior, and

(3) In those lands added to the Shasta National Forest by the act of March 19, 1948 (62 Stat. 83), which were acquired with funds of the United States, or lands received in exchange therefor.

(4) In those portions of the Juan Jose Lobato Grant (North Lobato tract) and of the Anton Chica Grant (El Pueblo tract) in New Mexico, mentioned in § 200.31 (c).

(b) Lands under jurisdiction of the Department of Agriculture. The Reorganization Plan and the Acts provide that mineral development may be permitted only with the consent of the Secretary of Agriculture and subject to such conditions as he may prescribe to protect the purposes for which the lands

were acquired or are being administered. An application will be rejected if the Secretary of Agriculture does not give his consent. Any lease, permit or other instrument granting the right to mine or remove the minerals will contain such stipulations as may be specified by that official in order to protect such purposes. All matters relating to the surface of the land and its protection, including responsibility for securing compliance with all applicable regulations and procedures of the Department of Agriculture, the terms of the lease relating to the surface and surface resources, and the stipulations specified for the protection of the land, are functions of the Department of Agriculture. Lessees and permittees will comply with the applicable regulations of the Secretary of Agriculture and will consult with the authorized representative of the Secretary of Agriculture as to matters relating to the surface.

§ 200.33 *Outstanding prospecting permits and leases.* Prospecting permits and leases heretofore issued by the Department of Agriculture will continue to be administered by the Department of the Interior in accordance with the regulations under which they were issued.

§ 200.34 *Filing and contents of application; filing fee; acreage limitation; qualifications; priority rights.* (a) While there is no required form for an application for a prospecting permit or lease, Form 4-1307 may be used for that purpose. If not, the application should:

(1) Specify clearly the particular mineral for which the lease or permit is sought;

(2) Name, if practicable, the branch of the Government agency having jurisdiction over the land and the administrative unit or project of which the land is a part;

(3) Contain a statement of applicant's citizenship; if a corporation, the State of incorporation and that it is authorized to hold a prospecting permit or lease, and a statement that applicant's interests, direct or indirect, in leases, prospecting permits or applications for the mineral applied for in acquired lands in the same State, do not exceed 10,240 acres;

(4) Contain a complete and accurate survey description of the lands for which a prospecting permit or lease is desired; in the States under the public land rec-

Published in 20 F.R. August 18, 1955

Copies to	Each AA	25	BFS	10
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	Each DGO	5	Miss Williams GS Room 3219	20

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tangular system, if surveyed, by legal subdivision, section, township, and range; if unsurveyed, by a similar description based upon the premise of its location when surveyed and by courses and distances connected to a corner of the public land rectangular system. In those States not covered by the public land rectangular system, by the description in the deed of conveyance, of the tract, to the United States or if a portion of such a tract, by courses and distances connected with an identifiable and established corner of an existing survey recognized by the laws of the State;

(5) Include an accurate map or plat of the lands prepared from the survey thereof or other reliable map source, unless the lands are surveyed under the public land system of surveys.

(b) An application for a prospecting permit or lease may be filed by any citizen or association of citizens of the United States, or corporation organized and existing under the laws of the United States or any State or Territory thereof.

(1) The application shall be filed in triplicate in the proper land office, or for lands or deposits in States in which there are no land offices, with the Director, Bureau of Land Management, Washington 25, D. C., except that applications for lands or deposits in the following States should be filed at the land offices named: North or South Dakota, land office at Billings, Montana; Nebraska or Kansas, at Cheyenne, Wyoming; Oklahoma and Texas, at Santa Fe, New Mexico. The application must be accompanied by a filing fee of \$10 which is not returnable.

(2) An application for a prospecting permit must be accompanied by full payment of the first year's rental of 25¢ per acre or fraction thereof, but no less than \$20.

(c) No applicant may hold more than 10,240 acres in any one State for the same mineral under prospecting permit and lease.

(d) A prospecting permit will be issued to the first qualified applicant, and may not include more than 2,560 acres of land entirely within a 6-mile square, except where the rule of approximation applies.

§ 200.35 Terms and conditions of prospecting permits; rental; bonds. (a) Prospecting permits are issued on Form 4-1099 for a period of 2 years and grant the permittee the exclusive right to prospect on and explore the lands described therein to determine the existence of, or workability of, the mineral deposits applied for and the related or associated minerals. Only such material may be removed from the land as is necessary to demonstrate the existence in commercial quantities of the mineral deposit applied for.

(b) A prospecting permit will require payment in advance by permittee of an annual rental of not less than 25 cents per acre or fraction of an acre, but no less than \$20 per year. The permittee may also be required, as a condition precedent the issuance of a permit, to furnish a permit bond.

(c) Prospecting may be carried on with the consent of the appropriate official of

the Department, bureau or agency having jurisdiction over the land where no structures are to be erected, and no substantial excavations or disturbances of the surface will be made. Such prospecting shall not be deemed to vest in the prospector an exclusive right of exploration or a preference right to a lease for the same or related minerals in any particular tract.

§ 200.36 Extension of permit. (a) A prospecting permit may be extended for one additional term of 2 years, in the discretion of the signing officer, upon written application made by the permittee and filed in triplicate in the proper land office at least 90 days prior to the expiration date of the permit. Such application must be accompanied by a filing fee of \$10, which is not returnable. In support of an application for extension of the prospecting permit, the permittee must show that he has diligently performed prospecting activities on the land during the period for which the permit was issued. This requirement may be dispensed with, in the discretion of the authorized officer, upon a satisfactory showing that the permittee's failure to perform diligent prospecting activities was due to conditions beyond permittee's control.

(b) Upon failure of the permittee to file an application for extension within the specified period, the permit will expire at the end of its primary term without notice to the permittee and the lands will thereupon become subject to new application for prospecting permits.

§ 200.37 Reward for discovery; preference right lease; bond. (a) (1) Upon discovery of a valuable deposit of the mineral for which the prospecting permit was issued, the permittee shall be entitled to a preference right lease for any or all of the lands in the permit. An application for a preference right lease must be filed in the proper land office not later than 30 days after the permit expires, and must describe the lands, disclose any change in the information contained in the application for the permit, specify fully the extent and mode of occurrence of the mineral deposit as disclosed by the prospecting, and show that a valuable deposit of minerals was discovered before the expiration of the permit. The permittee shall be liable for and shall pay to the United States a royalty of 12½ percent of the gross value of the minerals mined, at the point of shipment to market, during the period between the date of the filing of the application for the preference right lease and the issuance thereof, or the final rejection of the application, but no mining operations shall be carried on prior to the issuance of such lease without the written consent of the agency having jurisdiction over the surface of the land and subject to such conditions as the authorized representative of such agency shall prescribe. The application must be accompanied by a payment of 25¢ for each acre or fraction thereof included in the application but no less than \$20, which will be applied towards the payment of the first year's advance rental under the lease, the rate of which will be determined prior to its issuance

with notice to lessee. In no event shall the first year's rental on any lease be less than \$20.

(2) The lease will be issued on Form 4-1100 and will be dated the first day of the month following its execution by the signing officer, unless the applicant requests that it be dated the first day of the month the lease was executed.

(b) The terms and conditions of the lease, including the rental and royalty rates, will be established on an individual case basis. The lessee will be required to post a lease bond on Form 4-1301 or Form 4-1302 before the lease will be executed by the Government. The lease will be issued for a period of five or ten years, upon the advice of the agency having jurisdiction over the surface and the United States Geological Survey, with a right in the lessee to renew the same for successive periods of like duration under such reasonable terms and conditions as the Secretary of the Interior may prescribe, including the revision of or imposition of stipulations for the protection of the surface of the land as may be required by the agency having jurisdiction thereover. An application for renewal of the lease must be filed in manner similar to that prescribed for extension of a permit in § 200.36 (a) and the provisions of § 200.36 (b) are applicable to leases.

§ 200.38 Suspension of operations and production. (a) Applications by lessees for relief from the producing requirements or from all operating and producing requirements of mineral leases shall be filed in triplicate, in the office of the Regional Mining Supervisor of the Geological Survey and a copy thereof filed in the proper land office. Complete information must be furnished showing the necessity for such relief.

(b) The lease will be extended for the period of suspension of operations and production.

(c) A suspension shall take effect as of the time specified in the direction or assent of the Secretary or his authorized representative. Rental and minimum royalty payments will be suspended during any period of suspension of operations and production, beginning with the first day of the lease month on which the suspension of operations and production become effective or, if the suspension of operations and production becomes effective on any date other than the first day of a lease month, beginning with the first day of the lease month following such effective date. The suspension of rental and minimum royalty payments shall end on the first day of the lease month in which operations or production is resumed. Where rentals are creditable against royalties and have been paid in advance, proper credit will be allowed on the next rental or royalty due under the lease.

§ 200.39 Mineral deposits subject to lease through competitive bidding; leasing units. (a) Except for preference right leases, as set out in the preceding section, leases for lands containing valuable mineral deposits will be issued only to the qualified person who offers the highest bonus by competitive bidding, either by oral auction or sealed bids or

both as provided in the published notice inviting bids for the issuance of a lease covering such deposits.

(b) Any qualified person may file an application for the competitive offering of such deposits. Leasing units may not exceed, in reasonably compact form, 2,560 acres of land described in the manner required by § 200.34 (4). The authorized officer may prescribe a lesser area for any mineral deposit if the Geological Survey reports that such lesser area is adequate for a logical mining unit.

§ 200.40 *Application for lease by competitive bidding.* (a) An application for a mineral lease through competitive bidding must be filed in triplicate in the appropriate land office accompanied by a filing fee of \$10 which will not be returned. While there is no required form for such an application, Form 4-1307 may be used. If not, the application should contain the information specified in § 200.34 and should be accompanied by evidence that the land applied for is valuable for the mineral deposits named therein, together with a statement as to the character, extent and mode of occurrence thereof.

§ 200.41 *Notice of lease offer.* Notice of the offer of the mineral deposits for lease will be published, at the Government's expense, once a week for 4 consecutive weeks or for such other periods as the Bureau of Land Management may deem appropriate in a newspaper of general circulation in the county in which the mineral deposits are situated. A copy of the notice will be posted in the proper Land Office during the period of publication. The notice will set the day and hour of sale, whether the lease will be offered by oral auction bidding or by sealed bids or both. The notice will specify the place where the oral auction sale is to be held and where sealed bids are to be submitted and other information pertinent to the offering. The notice will contain a warning to all bidders against violation of 18 U. S. C. sec. 1860 which prohibits unlawful combination or intimidation of bidders. The notice shall also state that the Government reserves the right to reject any and all bids.

§ 200.42 *Bidding requirements; deposits.* (a) At a sale by oral auction the high bidder must deposit with the officer conducting the sale, on the day of the sale, $\frac{1}{2}$ of the amount of his bid and at a sale by sealed bids each bidder must include with his bid $\frac{1}{2}$ of the amount of the bid.

(b) If the sale is by oral auction and sealed bids, the oral auction sale will proceed first at the time and place specified therein in the notice of offering, and the officer conducting the sale will upon the termination of such oral auction bids declare the high bidder. Thereupon the officer conducting the sale will publicly open and audibly read all of the sealed bids which were received timely, and the lease will be awarded to the highest bidder, whether an oral auction bidder or a sealed bidder. The lease will be awarded to the high bidder sub-

ject to the submission of proof of his qualifications.

(c) All deposits with bids including rental payments must be made by certified check, cashier's check, bank draft, money order, or cash. Deposits made on rejected or unsuccessful bids will be returned to the bidders.

§ 200.43 *Action by successful bidder.* Three copies of the lease to be awarded will be sent to the successful bidder who will be allowed 30 days from receipt in which to execute such lease, pay the balance of the bonus bid and the first year's rental in full and file a surety bond in such amount as may be required but not less than \$500 on either of the bond forms specified in § 200.45, and furnish proof of citizenship and holdings as set forth in § 200.34 (a) (3). If the successful bidder, after being awarded the lease, fails or refuses to execute the same or to otherwise comply with the applicable regulations, his deposit will be forfeited.

§ 200.44 *Payments and reports.* Rentals under all leases and permits shall be paid to the Manager of the proper land office, as set forth in § 200.34 (b) (1), except that rentals and royalties on productive mining leases shall be paid to the Regional Mining Supervisor of the Geological Survey with whom all reports concerning operations under the lease shall be filed. All remittances to the Bureau of Land Management shall be made payable to the Bureau of Land Management, those to the Geological Survey shall be made payable to the United States Geological Survey.

§ 200.45 *Bonds.* Corporate surety prospecting permit or lease bonds may be furnished on Form 4-1302. In lieu of a corporate surety bond, a personal prospecting permit or lease bond secured by negotiable United States bonds of a par value equal to the amount of the required surety bond, together with a power of attorney may be executed on Form 4-1301.

§ 200.46 *Relinquishment of prospecting permit or lease.* The permittee or lessee may surrender the entire prospecting permit or lease or any legal subdivision thereof. If the lands are not described by legal subdivision, a partial relinquishment must describe definitely the lands surrendered and give the exact area thereof. A relinquishment must be filed in triplicate in the proper land office. Upon its acceptance, it will be effective as of the date it is filed, subject to the continued obligation of the permittee or lessee and his surety, to make payment of all accrued rentals and royalties, and to provide for the preservation of any mines or productive works or permanent improvements on the lands in accordance with the regulations and terms of the lease, and for the faithful compliance of all of the terms of the prospecting permit or lease.

§ 200.47 *Cancellation of prospecting permit or lease.* If a permittee or lessee fails to comply with the general regulations in force at the date of the prospecting permit or lease, or, as to a lease at the effective date of any readjustment of

the terms and conditions thereof, or defaults with respect to any of the terms, covenants, or stipulations of the permit or lease, and such failure or default continues for 30 days after service of written notice thereof by the Government then the permit or lease may be cancelled. A waiver of any particular cause for cancellation shall not prevent the cancellation of the permit or lease for any other cause, or for the same cause occurring at any other time. Until such cancellation is noted on the appropriate records of the Land Office, the lands will not be open to further application for permit or lease.

§ 200.48 *Transfers, including subleases.* Prospecting permits and leases may be transferred in whole or in part. The approval of a transfer of part of the lands in a prospecting permit or lease will create a new prospecting permit or lease for the transferred portion. A discovery either on the retained or the assigned portion of a prospecting permit will not inure to the benefit of the other. Approval of a transfer will not extend the life of the prospecting permit or the readjustment periods of the lease. Transfers, whether by direct assignments, operating agreements, subleases, working or royalty interests, or otherwise, must be filed in triplicate in the proper land office within 90 days after execution, and must be accompanied by a filing fee of \$10, which is not returnable. Evidence of the qualifications of the assignee or transferee to hold the permit or lease, as required by § 200.34 (a) (3) and (b) must be submitted together with an application for approval of the transfer. Before a transfer of a prospecting permit or lease will be approved, the transferee must submit a surety bond if the original permit or lease required the maintenance of a bond. A transfer will take effect the first day of the month following its approval, or if the transferee requests, the first day of the month of the approval.

§ 200.49 *Overriding royalties.* (a) An overriding royalty interest may be created by assignment or otherwise: *Provided, however,* That if the total of the overriding royalty interest at any time exceeds one percent of the gross value of the output at the point of shipment to market, it shall be subject to reduction or suspension by the Secretary of the Interior to a total of not less than one per cent of such gross value, whenever, in the interest of conservation, it appears necessary to do so in order (1) to prevent premature abandonment, or (2) to make possible the economic mining of marginal or low-grade deposits. Where there is more than one overriding royalty interest, any such suspension or reduction shall be applied to the respective interests in the manner agreed upon by the holders thereof or, in the absence of such agreement, in the inverse order of the dates of creation of such interests.

(b) Any assignment, sublease, or other transfer or agreement which creates an overriding royalty interest, will not be approved unless the owner of that interest files his agreement in writing that such interest is subject to suspen-

sion or reduction as provided in paragraph (a) of this section. No overriding royalties shall be paid at a rate in excess of the rate to which they have been so reduced until otherwise authorized by the Secretary of the Interior.

§ 200.50 *Fractional or future interest leases.* (a) A lease for a fractional or future interest in mineral deposits acquired by the Government may be issued in the discretion of the authorized officer, by and with the consent of the appropriate Government bureau or agency having jurisdiction over the land in which such deposits are located. The terms and conditions of such leases will be established on an individual case basis. No specific form of application for such leases is required, but the application should contain the information required by § 200.34, as well as the information required by paragraphs (b) and (c) of this section where applicable. The application must be filed in triplicate in the proper land office accompanied by a filing fee of \$10 which is not returnable.

(b) *Present fractional interest leases.* An application for a present fractional interest lease must show whether the applicant owns all of the fractional mineral interest not owned by the United States or all of the operating rights thereto. An applicant for such lease must have a present interest in the minerals. If applicant does not own all of such mineral interests or all of the operating rights thereto, the extent of the applicant's rights thereto must be

shown as well as the names of the other owners of such rights. Since the issuance of a lease to one who, upon such issuance, would have less than a majority interest in the minerals or the operating rights thereto is not regarded as being in the Government's interest, an application for a lease, the granting of which would lead to such result, may be rejected.

(c) *Future or fractional future interest leases.* An applicant for a future or fractional interest lease must submit, with his application, title evidence of his present interest in the mineral deposits. This may be accomplished by a certified abstract of title or a certificate of title. If applicant is the owner of the operating rights to the minerals and acquired such rights under a lease from or contract with the owner of such minerals, the application should also be accompanied by three copies of such lease or contract. A whole or fractional future interest lease will be issued only to an applicant who owns all or substantially all of the present operating rights to the minerals as fee owner, lessee, or operator holding such rights. Future interest leases will become effective on the date of vesting of title to the minerals in the United States as stated in the lease.

CLARENCE A. DAVIS,
Acting Secretary of the Interior.

AUGUST 11, 1955.

[F. R. Doc. 55-6710; Filed, Aug. 17, 1955;
8:45 a. m.]

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular No. 1920]

PART 186—MULTIPLE DEVELOPMENT OF MINERAL DEPOSITS UNDER THE MINING AND MINERAL LEASING LAWS

A new Part 186 is added, reading as follows:

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- 186.2 Validation of certain mining claims.
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- 186.24 Fissionable source materials; elimination of reservation in patents, etc.
- 186.25 Elimination of fissionable source materials reservation.
- 186.26 Mining locations for fissionable source materials.

AUTHORITY: §§ 186.1 to 186.26 issued under R. S. 2478, as amended, 68 Stat. 708; 43 U. S. C. 1201, 30 U. S. C. 521.

CROSS REFERENCES: Act of August 12, 1953 (67 Stat. 539, 30 U. S. C. 501-503); validating certain mining claims located subsequent to July 31, 1939, and prior to January 1, 1953; Atomic Energy Act of August 1, 1946 (60 Stat. 755, 42 U. S. C. 1801), as amended; act of October 20, 1914 (38 Stat. 741, 48 U. S. C. 432); acts of February 25, 1920 (41 Stat. 437, 30 U. S. C. 22, 48, 181), April 17, 1926 (44 Stat. 301, 30 U. S. C. 271-273), and February

7, 1927 (44 Stat. 1057, 30 U. S. C. 281-283), and all acts amendatory of and supplementary thereto known as the Mineral Leasing Acts. See 43 CFR Parts 191 to 196, inclusive, 198, and other appropriate sections of the regulations; also 30 U. S. C. sec. 22, U. S. Mining Laws—43 CFR Part 185.

§ 186.1 *Purposes and authority.* The act of August 13, 1954 (68 Stat. 708, 30 U. S. C. 521 et seq.), was enacted "To amend the mineral leasing laws and the mining laws to provide for multiple mineral development of the same tracts of public lands, and for other purposes." The regulations in this part are intended to implement only those sections of said act, hereinafter more fully identified, which require action by the Department of the Interior or its agencies. The expression "act" when used in this part, means the act of August 13, 1954 (68 Stat. 708). The expression "Leasing Act," when used in this part, refers to the "mineral leasing laws" as defined in section 11 of the act of August 13, 1954 (68 Stat. 708).

§ 186.2 *Validation of certain mining claims.* The act in section 1 (a) provides as follows:

That (a) subject to the conditions and provisions of this act and to any valid intervening rights acquired under the laws of the United States, any mining claim located under the mining laws of the United States subsequent to July 31, 1939, and prior to February 10, 1954, on lands of the United States, which at the time of location were—

(1) Included in a permit or lease issued under the mineral leasing laws; or

(2) Covered by an application or offer for a permit or lease which had been filed under the mineral leasing laws; or

(3) Known to be valuable for minerals subject to disposition under the mineral leasing laws,

shall be effective to the same extent in all respects as if such lands at the time of location, and at all times thereafter, had not been so included or covered or known: *Provided, however,* That, in order to be entitled to the benefits of this act, the owner of any such mining claim located prior to January 1, 1953, must have posted and filed for record, within the time allowed by the provisions of the act of August 12, 1953 (67 Stat. 539),¹ an amended notice of location as to such mining claim, stating that such notice

was filed pursuant to the provisions of said act of August 12, 1953, and for the purpose of obtaining the benefits thereof: *And provided further,* That in order to obtain the benefits of this act, the owner of any such mining claim located subsequent to December 31, 1952, and prior to February 10, 1954, not later than one hundred and twenty days after the date of enactment of this act,² must post on such claim in the manner required for posting notice of location of mining claims and file for record in the office where the notice or certificate of location of such claim is of record an amended notice of location for such claim, stating that such notice is filed pursuant to the provisions of this act, and for the purpose of obtaining the benefits thereof and, within said one hundred and twenty day period,³ if such owner shall have filed a uranium lease application as to the tract covered by such mining claim, must file with the Atomic Energy Commission a withdrawal of such uranium lease application or, if a uranium lease shall have issued pursuant thereto, a release of such lease, and must record a notice of the filing of such withdrawal or release in the county office wherein such notice or certificate of location shall have been filed for record.

§ 186.3 *Preference mining locations.* The act in section 3 (a) and (b) provides as follows:

(a) Subject to the conditions and provisions of this Act and to any valid prior rights acquired under the laws of the United States, the owner of any pending uranium lease application or of any uranium lease shall have, for a period of one hundred and twenty days after the date of enactment of this act,² as limited in subsection (b) of this section 3, the right to locate mining claims upon the lands covered by said application or lease.

(b) Any rights under any such mining claim so hereafter located pursuant to the provisions of subsection (a) of this section 3 shall be subject to any rights of the owner of any mining claim which was located prior to February 10, 1954, and which was valid at the date of the enactment of this act or which may acquire validity under the provisions of this act. As to any lands covered by a uranium lease and also by a pending uranium lease application, the right of mining location under this section 3, as between the owner of said lease and the owner of said application, shall be deemed as to such conflict area to be vested in the owner of said lease. As to any lands embraced in more than one such pending uranium lease

¹ Not later than December 10, 1953.

² Not later than December 11, 1954.

Published in 20 F. R. August 23, 1955

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application, such right of mining location, as between the owners of such conflicting applications, shall be deemed to be vested in the owner of the prior application. Priority of such an application shall be determined by the time of posting on a tract then available for such leasing of a notice of lease application in accordance with paragraph (c) of the Atomic Energy Commission's Domestic Uranium Program Circular 7 (10 CFR 60.7 (c)) provided there shall have been timely compliance with the other provisions of said paragraph (c) or, if there shall not have been such timely compliance, then by the time of the filing of the uranium lease application with the Atomic Energy Commission. Any rights under any mining claim located under the provisions of this section 3 shall terminate at the expiration of thirty days after the filing for record of the notice or certificate of location of such mining claim unless, within said 30-day period, the owner of the uranium lease application or uranium lease upon which the location of such mining claim was predicated shall have filed with the Atomic Energy Commission a withdrawal of said application or a release of said lease and shall have recorded a notice of the filing of such withdrawal or release in the county office wherein such notice or certificate of location shall be of record.

§ 186.4 Additional evidence required with application for patent. All questions between mining claimants asserting conflicting rights of possession under mining claims, must be adjudicated in the courts. Any applicant for mineral patent, who claims benefits under sections 1 or 3 of this act, or the act of August 12, 1953, supra, in addition to matters required in Part 185 of this Title, must file with his Application for Patent a certified copy of each instrument required to have been recorded as to his mining claim in order to entitle it to such benefits unless an Abstract of Title or Certificate of Title filed with the Application for Patent shall set forth said instruments in full. If a mining claim was located on or after the date of this act a statement must be filed showing that on the date of location the lands affected were not covered by a uranium lease or an application for a uranium lease. The applicant must also file a copy of the notice required to be posted on the claim and state in his application that such notice was duly posted in accordance with the requirements of the act.

§ 186.5 Reservation to United States of Leasing Act minerals. Section 4 of the act provides that:

Every mining claim or millsite—

(1) Heretofore located under the mining laws of the United States which shall be entitled to benefits under the first three sections of this Act; or

(2) Located under the mining laws of the United States after the effective date of passage of this act, shall be subject, prior to issuance of a patent therefor, to a reservation to the United States of all Leasing Act minerals and of the right (as limited in section 6 hereof)* of the United States, its lessees, permittees, and licensees to enter upon the land covered by such mining claim or millsite and to prospect for, drill for, mine, treat, store, transport, and remove Leasing Act minerals and to use so much of the surface and subsurface of such mining claim or millsite as may be necessary for such purposes, and whenever reasonably necessary,

*Section 6 of the act defines rights and obligations where the same lands are being used for mining operations and Leasing Act operations.

for the purpose of prospecting for, drilling for, mining, treating, storing, transporting, and removing Leasing Act minerals on and from other lands; and any patent issued for any such mining claim or millsite shall contain such reservation as to, but only as to, such lands covered thereby which at the time of the issuance of such patent were—

(a) Included in a permit or lease issued under the mineral leasing laws; or

(b) Covered by an application or offer for a permit or lease filed under the mineral leasing laws; or

(c) Known to be valuable for minerals subject to disposition under the mineral leasing laws.

§ 186.6 Mining claims and millsites located on Leasing Act lands after August 13, 1954. Since enactment of the act on August 13, 1954, and subject to its conditions and provisions, including the reservation of Leasing Act minerals to the United States as provided in section 4, mining claims and millsites may be located under the mining laws of the United States on lands of the United States which at the time of location are—

(a) Included in a permit or lease issued under the mineral leasing laws; or

(b) Covered by an application or offer for a permit or lease filed under the mineral leasing laws; or

(c) Known to be valuable for minerals subject to disposition under the mineral leasing laws;*

to the same extent in all respects as if such lands were not so included or covered or known.

§ 186.7 Acquisition of Leasing Act minerals in lands covered by mining claims and millsites. The Leasing Act minerals in lands covered by mining claims and millsites located after the date of the act or validated pursuant to the act may be acquired under the mineral leasing laws, upon appropriate application therefor being filed prior to the issuance of patent to such mining claims or millsites, or after the issuance of patent, if the patent contains a reservation of Leasing Act minerals to the United States as provided in section 4 of the act.

§ 186.8 Procedure to determine claims to Leasing Act minerals under unpatented mining locations. Section 7 of the act provides a procedure whereby a Leasing Act applicant, offeror, permittee or lessee may have determined the existence and validity of claims to Leasing Act minerals asserted under unpatented mining locations made prior to August 13, 1954, affecting lands embraced within such application, offer, permit or lease. This procedure is described in the succeeding §§ 186.9 to 186.20, inclusive, and involves the prior recording of notice of such application, offer, permit or lease and the filing of a request for publication of notice of the same as provided in §§ 186.9 and 186.10.

§ 186.9 Recordation of notice of application offer, permit or lease. (a) Not less than 90 days prior to the filing of such request for publication, there

must have been filed for record in the county office of record for each county in which lands covered thereby are situated, a notice of the filing of the application or offer, or of the issuance of the permit or lease, upon which said request for publication is based. Such notice must set forth the date of the filing of such application or offer or of the issuance of such permit or lease, the name and address of the applicant, offeror, permittee or lessee, and the description of the lands covered by such application, offer, permit or lease, showing the section or sections of the public land surveys which embrace such lands, or, if such lands are unsurveyed, either the section or sections which would probably embrace such lands when the public land surveys are extended to such lands, or a tie by courses and distances to an approved United States mineral monument.

(b) Such notice should conform to Form No. 1 and No. 1-A appended to the regulations in this part.*

§ 186.10 Request for publication of notice of Leasing Act filing; supporting instruments. (a) Having complied with the requirement of § 186.9, the applicant, offeror, permittee or lessee may file a Request for Publication of notice of such party's application, offer, permit or lease. Such request for publication shall be filed in the Land Office of the Bureau of Land Management for the Land District in which the lands are situated.* As to lands in States for which there are no Land Offices, any request for publication shall be filed with the Director of the Bureau of Land Management, Department of the Interior, Washington 25, D. C. No Request for Publication, or publication, may include lands in more than one Land District.

(b) Any Request for Publication should conform to Form No. 2 appended to the regulations in this part.*

(c) The filing of a Request for Publication must be accompanied by the following:

(1) A certified copy of the Notice of Application, offer, permit or lease recorded as required under § 186.9, setting forth the date of recordation thereof. The date of recordation shall be presumed to have been the date when the notice was filed for record pursuant to § 186.9, unless the certified copy of the notice shows otherwise or is accompanied by an affidavit of the person filing the request for publication showing that the notice was filed for record on a date prior to the date of recordation.

(2) An affidavit or affidavits of a person or persons over 21 years of age, setting forth that the affiant or affiants have examined the lands involved in a reasonable effort to ascertain whether any person or persons were in actual possession of or engaged in the working

*Any notices heretofore filed, which substantially comply to the requirements of the law, will be considered valid.

*In this connection, the Land Office for North Dakota and South Dakota is located at Billings, Montana; that for Nebraska and Kansas, at Cheyenne, Wyoming; and for Oklahoma, at Santa Fe, New Mexico.

of the lands covered by such request or any part thereof. If no person or persons were found to be in actual possession of or engaged in the working of said lands or any part thereof, on the date of such examination, such affidavit or affidavits shall set forth such fact. If any person or persons were so found to be in actual possession or engaged in such working on the date of such examination, such affidavit or affidavits shall set forth the name and address of each such person unless the affiant shall have been unable, through reasonable inquiry, to obtain information as to the name and address of such person; in which event, the affidavit or affidavits shall set forth fully the nature and the results of such inquiry.

(3) The certificate of a title or abstract company, or of a title abstractor, or of an attorney, based upon such company's, abstractor's or attorney's examination of the instruments affecting the lands involved, of record in the public records of the county in which said lands are situate as shown by the indices of the public records in the county office of record for said county, setting forth the name of any person disclosed by said instruments to have an interest in said lands under any unpatented mining claim located prior to enactment of the Act on August 13, 1954, together with the address of such person if disclosed by such instruments of record. Such certificate shall conform to Form No. 3 appended to the regulations in this part.⁵

§ 186.11 Publication of request. (a) Upon receipt of a Request for Publication and accompanying instruments, if all is found regular, the Manager, or the Director, as may be appropriate, at the expense of the requesting person (who prior to the commencement of publication must furnish the agreement of the publisher to hold such requesting person alone responsible for charges of publication), shall cause notice of the application, offer, permit or lease to be published in a newspaper, to be designated by the Manager, or the Director, as may be appropriate, having general circulation in the county in which the lands involved are situated.

(b) If such notice is published in a daily paper, it shall be published in the Wednesday issue for 9 consecutive weeks, or, if in a weekly paper, in 9 consecutive issues, or, if in a semi-weekly or tri-weekly paper, in the issue of the same day of each week for 9 consecutive weeks.

§ 186.12 Contents of published notice. (a) The notice to be published as required by the preceding section, shall describe the lands covered by the application, offer, permit or lease in the same manner as is required under § 186.9. Such published notice shall notify whomever it may concern, that if any person claiming or asserting under, or by virtue of, any unpatented mining claim located prior to enactment of the act of August 13, 1954, any right or interest in Leasing Act minerals as to such lands or any part thereof, shall fail to file in the office where such Request for Publication was filed (which office shall be specified in such notice), and within 150 days from

the date of the first publication of such notice (which date shall be specified in such notice), a verified statement which shall set forth, as to such unpatented mining claim;

(1) The date of location;

(2) The book and page of recordation of the notice or certificate of location;

(3) The section or sections of the public land surveys which embrace such mining claim; or if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument;

(4) Whether such claimant is a locator or purchaser under such location; and

(5) The name and address of such claimant and names and addresses so far as known to the claimant of any other person or persons claiming any interest or interests in or under such unpatented mining claim; such failure shall be conclusively deemed (i) to constitute a waiver and relinquishment by such mining claimant of any and all right, title, and interest under such mining claim as to, but only as to, Leasing Act minerals, and (ii) to constitute a consent by such mining claimant that such mining claim and any patent issued therefor, shall be subject to the reservation of Leasing Act minerals specified in section 4 of the act, and (iii) to preclude thereafter any assertion by such mining claimant of any right or title to or interest in any Leasing Act mineral by reason of such mining claim.

(b) Such published notice should conform to Form 4 appended to the regulations in this part.⁵

§ 186.13 Mailing of copies of published notice. Within fifteen days after the date of first publication, the person requesting such publication shall:

(a) Cause a copy of such notice to be personally delivered to or to be mailed by registered mail addressed to each person in possession or engaged in the working of the land whose name and address is shown by the affidavit or affidavits of examination of the land filed, as set forth in § 186.10;

(b) Cause a copy of such notice to be personally delivered to or to be mailed by registered mail addressed to each person who may, on or before the date of first publication, have filed for record, as to any lands described in the published notice, a Request for Notices, as provided in subsection (d) of section 7 of the act (see § 186.21);

(c) Cause a copy of such notice to be mailed by registered mail to each person whose name and address is set forth in the certificate required to be filed under § 186.10, and

(d) File in the office where the Request for Publication was filed an affidavit that copies have been delivered or mailed as herein specified. Notwithstanding the requirements in paragraphs

(a), (b) and (c) of this section, not more than one copy of such notice need be delivered or mailed to the same person.

§ 186.14 Service of copies; failure to comply. If any applicant, offeror, permittee or lessee requesting publication of notice under these regulations shall fail to comply with the requirements of section 7 (a) of the act as to a personal delivery or mailing of a copy of the published notice to any person, the publication of such notice shall be deemed wholly ineffectual as to that person or as to the rights asserted by that person and the failure of that person to file a verified statement, as provided in such notice shall in no manner affect, diminish, prejudice or bar any rights of that person.

§ 186.15 Proof of publication. After the period of newspaper publication has expired, the person requesting publication shall obtain from the office of the newspaper of publication, a sworn statement that the notice was published at the time and in accordance with the requirements under these regulations of this part, and shall file such sworn statement in the office where the Request for Publication was filed.

§ 186.16 Failure of mining claimant to file verified statement. If any claimant under any unpatented mining claim located prior to enactment of the act on August 13, 1954, which embraces any of the lands described in any notice published in accordance with the regulations in this part shall fail to file a verified statement, as specified in such published notice (see § 186.12), within one hundred and fifty days from the date of the first publication of such notice, such failure shall be conclusively deemed, except as otherwise provided in § 186.14:

(a) To constitute a waiver and relinquishment by such mining claimant of any and all right, title, and interest under such mining claim as to, but only as to, Leasing Act minerals, and

(b) To constitute a consent by such mining claimant that such mining claim and any patent issued therefor, shall be subject to the reservation of Leasing Act minerals specified in section 4 of the act (see § 186.5), and

(c) To preclude thereafter any assertion by such mining claimant of any right or title to or interest in any Leasing Act minerals by reason of such mining claim.

§ 186.17 Hearing; time and place. If any verified statement shall be filed by a mining claimant as contemplated under § 186.12, then the Manager of the Land Office, or the Director, as may be appropriate, shall fix a time and place for a hearing to determine the validity and effectiveness of the mining claimant's asserted right or interest in Leasing Act minerals. Such place of hearing shall be in the county where the lands

⁵ 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

⁵ See footnote 5.

in question, or part thereof, are located, unless the mining claimant agrees otherwise.

§ 186.18 Stipulation between parties. If at any time prior to a hearing the person requesting publication of notice and any person filing a verified statement pursuant to such notice shall so stipulate, then to the extent so stipulated, but only to such extent, no hearing shall be held with respect to rights asserted under that verified statement, and to the extent defined by the stipulation the rights asserted under that verified statement shall be deemed to be unaffected by the notice published pursuant to that request.

§ 186.19 Hearing; procedure. The procedures with respect to notice of such hearing and the conduct thereof, and in respect to appeals, shall follow the Rules of Practice of the Department of the Interior and the Bureau of Land Management (Part 221 of this title) relating to contests or protests affecting public lands of the United States.

§ 186.20 Effect of decision affirming a mining claimant's rights. If, pursuant to a hearing held as provided in the regulations of this part, the final decision rendered in the matter shall affirm the validity and effectiveness of any mining claimant's right or interest under a mining claim as to Leasing Act minerals, then no subsequent proceedings under section 7 of the act and the regulations of this part shall have any force or effect upon the so-affirmed right or interest of such mining claimant under such mining claim.

§ 186.21 Recording by mining claimant of request for copy of notice. (a) Section 7 (d) of the act provides that:

Any person claiming any right in Leasing Act minerals under or by virtue of any unpatented mining claim heretofore located and desiring to receive a copy of any notice of any application, offer, permit, or lease which may be published as above provided in subsection (a) of this section 7, and which may affect lands embraced in such mining claim, may cause to be filed for record in the county office of record where the notice or certificate of location of such mining claim shall have been recorded, a duly acknowledged request for a copy of any such notice.^{*} Such request for copies shall set forth the name and address of the person requesting copies and shall also set forth, as to each mining claim under which such person asserts rights in Leasing Act minerals:

- (1) The date of location;
- (2) The book and page of the recordation of the notice or certificate of location; and
- (3) The section or sections of the public land surveys which embrace such mining claim; or, if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument.

Other than in respect to the requirements of subsection (a) of this section 7 as to personal delivery or mailing of copies of notices and in respect to the provisions of subsection (e) of this section 7, no such

request for copies of published notices and no statement or allegation in such request and no recordation thereof shall affect title to any mining claim or to any land or be deemed to constitute constructive notice to any person that the person requesting copies has, or claims, any right, title, or interest in or under any mining claim referred to in such request.

(b) Any request for a copy of notices recorded pursuant to the foregoing section 7 (d) of the act, should conform to Form No. 6, appended to the regulations in this part.^{*}

§ 186.22 Relinquishment by mining claimant of Leasing Act minerals. Section 8 of the act provides that:

The owner or owners of any mining claim heretofore located may, at any time prior to issuance of patent therefor, waive and relinquish all rights thereunder to Leasing Act minerals. The execution and acknowledgment of such a waiver and relinquishment by such owner or owners and the recordation thereof in the office where the notice or certificate of location of such mining claim is of record shall render such mining claim thereafter subject to the reservation referred to in section 4 of this Act and any patent issued therefor shall contain such a reservation, but no such waiver or relinquishment shall be deemed in any manner to constitute any concession as to the date of priority of rights under said mining claim or as to the validity thereof.

§ 186.23 Helium Reserves Nos. 1 and 2; conditions of opening to mining location and mineral leasing. (a) Section 9 of the act provides that:

Lands withdrawn from the public domain which are within (a) Helium Reserve Numbered 1, pursuant to Executive Orders of March 21, 1924, and January 28, 1926, and (b) Helium Reserve Numbered 2 pursuant to Executive Order 6184 of June 26, 1933, shall be subject to entry and location under the mining laws of the United States, and to permit and lease under the mineral leasing laws, upon determination by the Secretary of the Interior, based upon available geologic and other information, that there is no reasonable probability that operations pursuant to entry or location of the particular lands under the mining laws, or pursuant to a permit or lease of the particular lands under the Mineral Leasing Act, will result in the extraction or cause loss or waste of the helium-bearing gas in the lands of such reserves: *Provided*, That the lands shall not become subject to entry, location, permit, or lease until such time as the Secretary designates in an order published in the *FEDERAL REGISTER*: *And provided further*, That the Secretary may at any time as a condition to continued mineral operations require the entrymen, locator, permittee, or lessee to take such measures either above or below the surface of the lands as the Secretary deems necessary to prevent loss or waste of the helium-bearing gas.

(b) No mining location made and no application for permit or lease filed as to Helium Reserve land prior to the time of opening specified in the notice of opening published in the *FEDERAL REGISTER* will confer any rights on the locator or applicant.

§ 186.24 Fissionable source materials; elimination of reservation in patents, etc. Section 10 (c) of the act in its amendment of section 5 (b) 7 of the Atomic Energy Act of 1946 (60 Stat. 755),

eliminated the requirement for a reservation of fissionable source materials in patents, conveyances, leases, permits or other authorizations as to public lands or their mineral resources granted by the United States after August 1, 1946, and provided that in cases where any patent, conveyance, lease, permit or other authorization has been issued which reserved to the United States fissionable source materials and the right to enter upon the land and prospect for, mine and remove the same, the head of the department or agency which issued the patent, conveyance, lease, permit or other authorization shall, on application of the holder thereof, issue a new or supplemental patent, conveyance, lease, permit or other authorization without such reservation. The provisions of said section 10 (c) are reenacted in section 68 (c) of the Atomic Energy Act of 1954 (68 Stat. 921, 934).

§ 186.25 Elimination of fissionable source materials reservation. (a) Any person who holds a patent, conveyance, lease, permit or other authorization issued by the Department of the Interior through the Bureau of Land Management, with a fissionable source material reservation to the United States pursuant to section 5 (b) 7 of the Atomic Energy Act of 1946, prior to its amendment above referred to, and who is desirous of having such reservation eliminated from the patent, conveyance, lease, permit or other authorization, must file an application therefor in the Land Office of the Bureau of Land Management for the Land District in which the lands involved are situated.^{*} As to lands in States for which there are no Land Offices, such application must be filed with the Director of the Bureau of Land Management, Washington 25, D. C.

(b) Such an application must set forth the name and address of the applicant, must fully identify the instrument from which elimination of such reservation is sought, by serial number, date, name of patentee, grantee, lessee, permittee or other designated recipient of authorization, and must set forth the description of the lands to which the application relates.

(c) If the application is for a new or supplemental patent or other conveyance, the applicant must file with and in support of the application, an abstract of title certified by a duly authorized and licensed abstractor of titles, or a certificate of title certified by a duly authorized and licensed title company, certified in either instance to a date inclusive of the date of the filing of such application and showing the applicant to be the holder and owner, as to the lands covered by the original patent, or conveyance. The successor to any original lease, permit or holder of other authorization is shown by the records of the Bureau of Land Management. Any new or supplemental patent, conveyance, lease, permit or other authorization, issued pursuant to such application, will be issued in the name of the applicant.

(d) If, as to any lands covered by a patent containing a fissionable source

^{*} See § 186.13 (b).

^{*} See footnote 5.

^{*} See footnote 6.

material reservation, any rights have been granted by the United States pursuant to such reservation, then any new or supplemental patent shall be made subject to those rights, but the patentee shall be subrogated to the rights of the United States.

(e) An application for a new or supplemental lease, permit or other authorization, must be filed by the record holder and owner of such lease, permit or other authorization as shown by the records of the Bureau of Land Management.

(f) If the application (and supporting abstract of title or title certificate, where required) be found to comply with the regulations, in this part, the Manager of the Land Office, will:

(1) Where the application is for a new or supplemental patent or conveyance, transmit the application, including the supporting abstract or title certificate, to the Director of the Bureau of Land Management for appropriate action; or

(2) Where the application is for a new or supplemental lease, permit or other authorization, forward to the applicant a supplement to and modification of the lease or permit or other authorization setting forth that the fissionable source material reservation of the original lease, permit or other authorization is thereby eliminated from said original lease, permit or other authorization insofar as it relates to the land covered by the application. No execution by an applicant of a so-issued supplemental and modification instrument shall be required.

(g) Appropriate notation shall be made upon the records of the Land Office in which any application was filed of the issuance pursuant thereto of a new or supplemental patent, conveyance, lease, permit or other authorization.

§ 186.26 *Mining locations for fissionable source materials.* (a) In view of the amendment of section 5 (b) 7 of the Atomic Energy Act of 1946 by section 10 (c) of the act of August 13, 1954 (68 Stat. 708), and of the provisions of the Atomic Energy Act of 1954 (68 Stat. 921), it is clear that after enactment of said act of August 13, 1954, valid mining locations under the mining laws of the United States may be based upon a discovery of a mineral deposit which is a fissionable source material.

(b) As to mining locations made prior to the enactment of said act of August 13, 1954, section 10 (d) of the act provides:

(d) Notwithstanding the provisions of the Atomic Energy Act, and particularly sec. 5 (b) (7) thereof, prior to its amendment hereby, or the provisions of the act of August 12, 1953 (67 Stat. 539), and particularly sec. 3 thereof, any mining claim, heretofore located under the mining laws of the United States for or based upon a discovery of a mineral deposit which is a fissionable source material and which, except for the possible contrary construction of said Atomic Energy Act, would have been locatable under such mining laws, shall, insofar as adversely affected by such possible contrary construction, be valid and effective, in all respects to the same extent as if said mineral deposit were a locatable mineral

deposit other than a fissionable source material.

CLARENCE A. DAVIS,
Acting Secretary of the Interior.

AUGUST 16, 1955.

Form No. 1 (see § 186.9)

NOTICE OF FILING OF *APPLICATION, *OFFER

To whomever it may concern:

Notice is hereby given:

1. That on _____, the undersigned *applicant, *offeror _____ whose address is _____ filed in the Land Office of the Bureau of Land Management, Department of the Interior, at _____ an *application, *offer (Place)

for _____ *prospecting permit, (Kind)

*lease under and pursuant to the mineral leasing laws as defined in Section 11 of the Act of August 13, 1954 (68 Stat. 708) (designated in said Land Office as Serial _____), and

2. That said *application, *offer covers lands in the County of _____, State of _____, described as follows, to wit: Township _____, Range _____, Meridian.

(Describe in conformity with requirements of section 7 (a) of act of August 13, 1954 (68 Stat. 708; see 43 CFR 186.9).)

Dated _____

(*Applicant, *offeror)

NOTE: Append proper acknowledgment for individual, or for officer or other authorized representative of corporation, in compliance with the laws of the State where the lands are situated.

Form No. 1-A (see § 186.9)

NOTICE OF ISSUANCE OF *PROSPECTING PERMIT, *LEASE

To whomever it may concern:

Notice is hereby given:

1. That on _____ there was issued by the United States of America under and pursuant to the mineral leasing laws as defined in Section 11 of the Act of August 13, 1954 (68 Stat. 708), *a, *an _____, (Kind) effective _____, *prospecting permit, *lease to _____ (Name of original permittee or lessee)

as *permittee, *lessee, and that the undersigned _____ whose address is _____ (Name) is the present *permittee, *lessee under said *permit, *lease as to the lands described in section 2 of this notice, bearing Serial No. _____, as shown by the records of the Bureau of Land Management, Department of the Interior; and

2. That said *permit, *lease covers lands in the County of _____, State of _____, described as follows, to wit: Township _____, Range _____, Meridian.

(Describe in conformity with requirements of section 7 (a) of act of August 13, 1954 (68 Stat. 708; see 43 CFR 186.9).)

Dated _____

(*Permittee, *lessee)

NOTE: Append proper acknowledgment for individual or for officer or other authorized representative of corporation, in compliance with the laws of the State where the lands are situated.

*Use appropriate term.

Form No. 2 (see § 186.10)

REQUEST FOR PUBLICATION OF NOTICE OF APPLICATION, OFFER, PERMIT, OR LEASE PURSUANT TO SECTION 7 OF THE ACT OF AUGUST 13, 1954 (68 STAT. 708)

To the Manager of the Land Office of the Bureau of Land Management, Department of the Interior:

(City and State)
Pursuant to the provisions of section 7 of the act of August 13, 1954 (68 Stat. 708), and to the applicable regulations thereunder (43 CFR 186.5), the undersigned _____

(Name)
whose address is _____ being the *applicant, *offeror in the *application, *offer hereinafter described *permittee, *lessee under *permit, *lease hereby requests that notice of such *application, *offer, *permit, *lease be published as provided in section 7 of said act and said applicable regulations thereunder.

#1. On _____ the undersigned filed in the Land Office of the Bureau of Land Management, Department of the Interior, at _____ an *application, *offer for _____ *prospecting permit, *lease under and pursuant to the mineral leasing laws as defined in section 11 of the act of August 13, 1954 (68 Stat. 708), (designated in said Land Office as Serial _____).

#1. On _____ there was issued by the United States of America under and pursuant to the mineral leasing laws as defined in section 11 of the act of August 13, 1954 (68 Stat. 708), *a, *an _____ *prospecting permit, *lease to _____ (Name of original permittee or lessee)

as *permittee, *lessee.
The undersigned is the present *Permittee, *lessee under said *Permit, *lease: bearing Serial _____ as to the lands described in section 2 of this request, as shown by the records of the Bureau of Land Management, Department of the Interior.

2. Said *Application, *offer, *permit, *lease covers lands in the County of _____, State of _____, described as follows, to wit: Township _____, Range _____, Meridian.

(Describe in conformity with requirements of section 7 (a) of act of August 13, 1954 (68 Stat. 708; see 43 CFR 186.9).)
3. The undersigned has heretofore complied with the requirements of section 7 (a) of said act of August 13, 1954, and of 43 CFR section 186.9 regarding the filing for record, not less than ninety (90) days prior to the filing of this Request for Publication of notice, of the *filing of said Application/Offer, *issuance of said Prospecting Permit/Lease.

In compliance with section 7 (a) of said act of August 13, 1954, and 43 CFR 186.10, there is enclosed herewith a certified copy of said recorded notice, together with an affidavit(s) of examination of the lands involved and a certificate based upon examination of the instruments of record affecting the lands involved.

¹ In this connection, the Land Office for North Dakota and for South Dakota is located at Billings, Montana; that for Nebraska and Kansas at Cheyenne, Wyoming; and for Oklahoma, at Santa Fe, New Mexico.

Where there is no land office for the State in which the lands are located, requests should be filed with the Director of the Bureau of Land Management, Department of the Interior, Washington 25, D. C.

4. The undersigned agree(s) to pay the entire cost of the publication herein requested in such newspaper as you may designate as the medium for such publication, and the undersigned agree(s) prior to commencement of such publication, upon receipt from you of the name and address of the newspaper so designated, to furnish the agreement of the publisher of such newspaper to hold the undersigned alone responsible for the charges of publication.

Dated _____

(*Applicant, *offeror,
*permittee, *lessee)

Form No. 3 (See § 186.10)

CERTIFICATE

The undersigned hereby certifies that:

#1. *It, *he, *she is a duly qualified and licensed *Title Company, *Abstract Company, *Title Abstractor.

#1. *He, *she is an attorney admitted to practice law in one or more of the states in the United States of America.

2. *It, *he, *she has examined the instruments affecting the hereinafter described lands, of record in the public records of the county in which the lands are situate as shown by the indices of the public records in the county office of record for said county; the lands hereinabove referred to being situate in the County of _____, State of _____, and described as follows:

(Describe as described in the Request for Publication, in conformity with requirements of section 7 (a) of act of August 13, 1954 (68 Stat. 708; see 43 CFR 186.9).)

3. Based upon the undersigned's said examination of said instruments, there is set forth below the name of each person* disclosed by said instruments to have an interest in said lands under any unpatented mining claim located prior to the enactment of the act of August 13, 1954 (68 Stat. 708), together with the address of such person if disclosed by such instruments of record:

Name of person

Address
(If so disclosed)
(If not so disclosed—
write "Not Disclosed")

In witness whereof, this Certificate is executed this _____ day of _____, 19____

(If corporation)

(Corporate name)

By _____
(Designate below signature office of person signing for corporation)

Address
(If individual)

(Name)

Address

NOTE: Affix corporate seal if corporation executes.

Form No. 4 (see § 186.12)

NOTICE OF *APPLICATION, *OFFER, *PERMIT, *LEASE

Published pursuant to section 7 of act of August 13, 1954 (68 Stat. 708)

To whomever it may concern

Notice is hereby given in pursuance of a proper Request for Publication heretofore

filed in accordance with section 7 of the act of August 13, 1954 (68 Stat. 708) and the regulations thereunder (43 CFR 186.8):

#1. That on _____ (Date)

----- whose
(Name of Applicant or offerer)

address is _____ filed in the
Land Office of the Bureau of Land Management, Department of the Interior, at
----- an *Application, *offer
(Place)

for _____ *Prospecting permit,
(Kind)

*lease under and pursuant to the mineral leasing laws as defined in section 11 of the act of August 13, 1954 (68 Stat. 708) (designated in said Land Office as Serial _____); and

#1. That on _____ there
(Date)

was issued by the United States of America under and pursuant to the mineral leasing laws as defined in section 11 of the act of August 13, 1954 (68 Stat. 708), *a, *an
----- *Prospecting permit,
(Kind)

*lease to _____,
(Name of original permittee or lessee)
as *Permittee, *lessee and that
(Name)

whose address is _____ is
the present *Permittee, *lessee under said
*Permit, *lease as to the lands described in section 2 of this notice, bearing Serial No. _____, as shown by the records of the Bureau of Land Management, Department of the Interior; and

2. That said *application, *offer, *permit, *lease, covers lands in the County of _____, State of _____, described as follows, to-wit: Township _____, Range _____, Meridian _____.

(Describe in conformity with requirements of section 7 (a) of act of August 13, 1954 (68 Stat. 708; see 43 CFR 186.9).)

3. That if any person claiming or asserting under, or by virtue of, any unpatented mining claim located prior to enactment of the act of August 13, 1954 (68 Stat. 708), any right or interest in Leasing Act minerals (as defined in Section 11 of said Act of August 13, 1954) as to the above-described lands or any part thereof, shall fail to file in the Land Office of the Bureau of Land Management at _____, and within 150 days from the below-stated date of first publication of this Notice, a verified statement which shall set forth as to such mining claim:

(1) The date of location;

(2) The book and page of recordation of the notice or certificate of location;

(3) The section or sections of the public land surveys which embrace such mining claim; or if such lands are unsurveyed either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument;

(4) Whether such claimant is a locator or purchaser under such location; and

(5) The name and address of such claimant and names and addresses so far as known to the claimant of any other person or persons claiming any interest or interests in or under such unpatented mining claim;

such failure shall be conclusively deemed (1) to constitute a waiver and relinquishment by such mining claimant of any and all right, title, and interest under such mining claim as to, but only as to, Leasing Act minerals, and (2) to constitute a consent by such mining claimant that such mining claim and any patent issued therefor, shall be subject to the reservation of Leasing Act

minerals specified in section 4 of said Act of August 13, 1954, and (iii) to preclude thereafter any assertion by such mining claimant of any right or title to or interest in any Leasing Act minerals by reason of such mining claim.

The date of first publication of this Notice shall be _____, 195____

Dated _____
(Manager)

(Land Office, Bureau of
Land Management, Department of the Interior)

First publication: _____
(Date)

Form No. 5 (see §§ 186.8; 186.16)

Not to be filled in by mining claimant.

Application _____
Offer _____
Prospecting Permit _____
Lease _____
Serial No. _____

Verified Statement of Mining Claimant
Pursuant to section 7 of the act of
August 13, 1954 (68 Stat. 708)

Pursuant to the provisions of section 7 of the act of August 13, 1954 (68 Stat. 708), and to the applicable regulations thereunder (43 CFR 186.8; 186.16) the undersigned respectfully state(s) and represent(s):

1. Under and by virtue of the hereinafter mentioned mining claim(s) located prior to enactment of the act of August 13, 1954 (68 Stat. 708) the undersigned _____, whose address is _____, claims rights in Leasing Act minerals as defined in said act.

2. Said mining claim(s) is/are situate in the County of _____, State of _____, and are identified as follows:

Name of mining claim	Date of location	Notice or certificate of location recorded	
		Book	Page

#3. Said mining claim(s) is/are embraced in the following section(s) of the public land surveys, namely: Township _____, Range _____, Meridian Section(s): _____.

#3. Said mining claim(s) will probably be embraced in the following section(s) when the public land surveys are extended to the lands covered by said mining claim(s), namely: Township _____, Range _____, Meridian Section(s): _____.

NOTE: In lieu of # 3, the mining claim may be described by a tie by courses and distances to an approved United States mineral monument.

4. The undersigned is a locator or purchaser under said mining claim(s) as follows, to wit:

Name of claim _____ Claimant's interest _____

#Use this paragraph 3 where public land surveys have been extended to the lands on which the mining claim(s) are situated.

#Use this paragraph 3 where public land surveys have not been extended to the lands on which the mining claims are situated. Or as an alternate, give as to each mining claim a tie by courses and distances from the location or discovery monument or a specified corner of the mining claim, to an approved United States Mineral Monument identified by its official survey number.

#Use appropriate paragraph No. 1.

**If none, write "None."

*Use appropriate term.

#Use appropriate paragraph No. 1.

(Insert opposite the name of each claim the word "locator" or the word "purchaser," to show the nature of the mining claimant's interest.)

5. The names and addresses, so far as known to the undersigned claimant, of any other person or persons claiming any interest or interests in or under the above-named unpatented mining claim(s) are as follows:

(Set forth name and address of each other claimant, so far as known to mining claimant filing above statement, and identify which of the above-named mining claim(s) each such other claimant is interested in.)

6. This verified statement of the undersigned mining claimant is being filed in accordance with the provisions of section 7 of said act and pursuant to a "Notice of Application, *offer, *permit, *lease," published as to "-----" *Application,

(Kind)

*offer, *permit, *lease, Serial ----- and (Number) within one hundred and fifty (150) days from the first publication of said Notice.

Dated -----

(Mining claimant)

VERIFICATION

(Where mining claimant is an individual)

State of -----

County of -----, ss:

-----, being (Name of mining claimant)

duly sworn, deposes and says that (s)he is the mining claimant who executed the foregoing Statement of Mining Claimant; that (s)he has read the said foregoing verified statement and knows the content thereof; and that the same is true of his/her own knowledge.

Subscribed and sworn to before me this ----- day of -----, 19 --

(Notary Public in and for the State of ----- County of -----)

My commission expires:-----

VERIFICATION

(Where mining claimant is a corporation)

State of -----

County of -----, ss:

-----, being duly sworn, deposes and says that (s)he is an officer, to-wit, -----, of -----, the corporation,

(Name of corporation) named in and whose name is subscribed to the foregoing Verified Statement of Mining Claimant, and makes this verification for and on behalf of said corporation; that (s)he has read the foregoing Verified Statement of Mining Claimant and that the same is true of his/her own knowledge.

(Notary Public in and for the State of ----- County of -----)

My commission expires:-----

Form No. 6

REQUEST OF MINING CLAIMANT FOR COPY OF NOTICE OF APPLICATION, OFFER, PERMIT OR LEASE PURSUANT TO THE ACT OF AUGUST 13, 1954 (68 STAT. 708), 43 CFR 186.21

Pursuant to the provisions of section 7 (d) of the act of August 13, 1954 (68 Stat. 708) and to the applicable regulations thereunder (43 CFR 186.21), the undersigned hereby requests a copy of any notice of any Leasing Act application, offer, permit or lease which may be published by the Secretary of the Interior of the United States or his designated representative, as provided in subsection (a) of section 7 of said act, affecting any of the lands hereinafter described and in that con-

nection respectfully state(s) and represent(s):

1. Under and by virtue of the hereinafter-mentioned mining claim(s) located prior to enactment of the Act of August 13, 1954 (68 Stat. 708), the undersigned ----- (Name)

whose address is -----, claims rights in Leasing Act minerals as defined in said act.

2. Said mining claim(s) is/are situate in the County of -----, State of -----, and are identified as follows:

Name of mining claim	Date of location	Notice or certificate of location recorded	
		Book	Page

3. Said mining claim(s) is/are embraced in the following section(s) of the public land surveys, namely: Township -----, Range -----, Meridian Section(s): -----; or

4. Said mining claim(s) will probably be embraced in the following section(s) when the public land surveys are extended to the lands covered by said mining claim(s), namely: Township -----, Range -----, Meridian Section(s): -----

NOTE: In lieu of paragraph 4, the mining claim may be described by a tie by courses and distances to an approved United States mineral monument.

5. The undersigned is a locator or purchaser under said mining claim(s) as follows, to-wit:

Name of claim

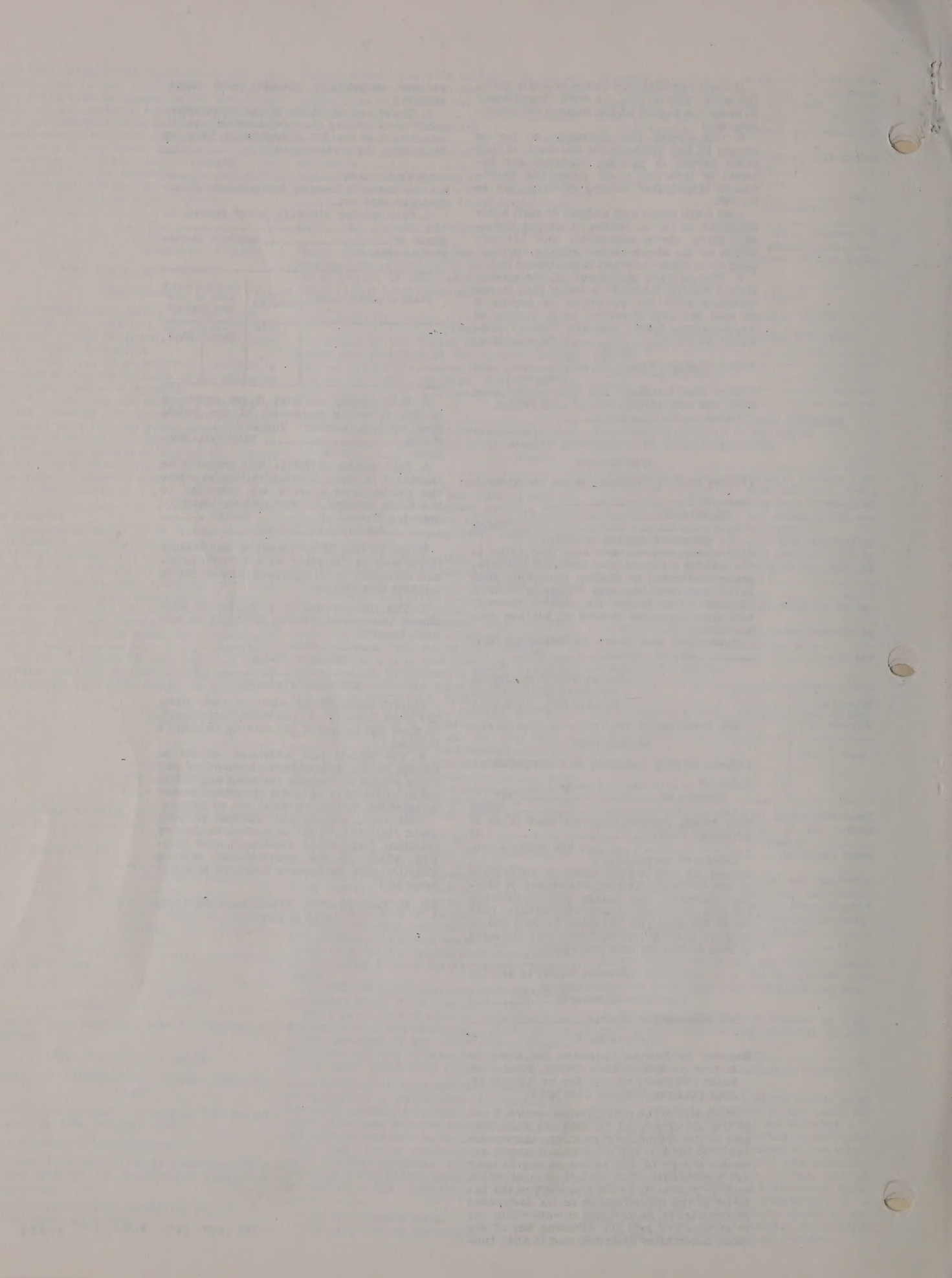
Claimant's interest

(Insert opposite the name of each claim the word "locator" or the word "purchaser", to show the nature of the mining claimant's interest.)

6. The names and addresses, so far as known to the undersigned claimant, of any other person or persons claiming any interest or interests in or under the above-named unpatented mining claim(s) are as follows:

(Set forth names and address of each other claimant, so far as known to mining claimant filing above statement, and identify which of the above-named mining claim(s) each such other claimant is interested in.)

[F. R. Doc. 55-6757; Filed, Aug. 22, 1955; 8:45 a. m.]



Repl. by 2043

TITLE 43—PUBLIC LANDS:
INTERIOR
Chapter I—Bureau of Land Manage-
ment, Department of the Interior
(Circular 1921)
Part 259—Disposal of Materials

- Sec.**
259.1 Statutory authority.
259.2 Definitions.
259.3 Disposals which must be made under other statutes; rights under other statutes.
- SALES**
- 259.4 Sale and appraisal.
259.5 Who may apply.
259.6 Application; contents.
259.7 Publication and posting.
259.8 Deposits with bids.
259.9 Action on bids; qualifications of bidders.
259.10 Contracts.
259.11 Bond.
259.12 Payment.
259.13 Passage of title; risk of loss.
259.14 Reappraisals.
259.15 Assignments.
259.16 Termination of contracts.
259.17 Extension of time.
259.18 Removal of personal property upon termination of contract.
259.19 Default, suspension, cancellation, damages and expenses incurred by Government chargeable to purchaser.
259.20 Duration of contract.
- FREE USE**
- 259.21 Free-use privilege; limitations.
259.22 Application for permit.
259.23 Issuance and cancellation of permit; removal of materials; bond.
259.24 Removal by agent.
259.25 Termination of permit; extensions; notice of completion of removal operations.
- GENERAL**
- 259.26 Trespass; penalty for unauthorized removal of material.
259.27 Appeals.

and is not expressly prohibited by laws of the United States, nor detrimental to the public interests. The act of August 31, 1950 (64 Stat. 572; 43 U. S. C. sup. 1188), added to the act of July 31, 1947, a section 4 authorizing the disposal of sand, stone, gravel, and vegetative materials located below high-water mark of navigable waters of the Territory of Alaska. The act of April 15, 1954 (68 Stat. 53) provides that for the purpose of aiding in the development of building materials essential to the growth of Alaska, the Secretary of the Interior is authorized, in his discretion, for a period of fifteen years from the date of approval of that act and pursuant to the provisions of the act of July 31, 1947 (61 Stat. 681), as amended, to permit the removal of deposits of siliceous volcanic ash, commonly known as pumicite, from such areas as he may designate along the shores of Shelikof Strait in Katmai National Monument, Alaska.¹

(b) The provisions of this act do not apply to lands in any national forest, national park or national monument, except as stated in paragraph (a) of this section, or to any Indian lands, or lands set aside or held for the use or benefit of Indians, including lands over which jurisdiction has been transferred to the Department of the Interior by Executive Order for the use of Indians.

[Paragraphs (a) and (b) amended by Circ. 1893, 19 F. R. 9195, Dec. 24, 1954]

(c) Except as to the land specified in paragraph (b) of this section, the disposal may be made of materials on lands withdrawn in aid of a function of a Federal department or agency other than the Department of the Interior, or a State, territory, county, municipality, water district, or other local Government subdivision or agency, with the consent of said Federal department or agency, or of such State, Territory, or local governmental unit.

¹Pursuant to the act of April 15, 1954, *supra*, and for a period of 15 years from the date thereof, unless sooner revoked, the following described area is designated for the removal of the deposits named in the act:

Those lands within ¼ mile of mean high tide in Geographic Harbor at latitude 58° 08' N., longitude 154° 38' W., the harbor lying within Amalik Bay on Shelikof Strait, Katmai National Monument, Alaska.

Appropriate conditions for the protection of the monument will be included in the contracts.

§ 259.2 *Definitions.* (a) "Authorized officer" means the Government official who has been duly authorized to sign the contract for the disposal of materials or to issue a permit under the act and to take action under such contract or permit.

(b) "Officer in charge" means such officer as may be designated by the signing officer or other authorized Government official to supervise operations under such contract or permit.

(c) "The act" means the act of July 31, 1947 (61 Stat. 681; 43 U. S. C. 1185-1188, as amended).

§ 259.3 *Disposals which must be made under other statutes; rights under other statutes.* (a) The disposal of materials will be made under other acts where there is any such statutory authority. Dead or down timber, or timber which has been seriously or permanently damaged by forest fires, shall not be disposed of under the act but rather under the act of March 4, 1913 (37 Stat. 1015; 16 U. S. C. 614, 615), as amended, and the regulations thereunder (Part 284 of this chapter). However, where such dead, down, or damaged timber is intermingled with timber which is live, standing, and of merchantable size and character, and it is not feasible to sell the two classes of timber separately, consideration will be given to the disposal of both classes in a single transaction under the act and the regulations in this part.

(b) The disposal of timber in Alaska, where statutory authority under other acts exists, will be made under such statutes and the applicable regulations (Part 79 of this chapter). Sales of more than a two years' supply of timber for domestic use in Alaska may be authorized under the act. Timber on the revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands will be disposed of under the applicable act and regulations (Part 115 of this chapter).

(c) The limitations on free-use privileges under the act because of the existence of other statutory authority for the free use of timber are set out in § 259.21.

(d) Sand, stone, and gravel of such quality and quantity as to be subject to the mining laws, will not be disposed of under the act.

(e) Where there are valid, existing claims to the land by reason of settle-

AUTHORITY: §§ 259.1 to 259.27 issued under sec. 1, 61 Stat. 681; 43 U. S. C. 1185.

SOURCE: §§ 259.1 to 259.27 appear at 19 F. R. 9133, Dec. 23, 1954, except as otherwise noted.

§ 259.1 *Statutory authority.* (a) The act of July 31, 1947 (61 Stat. 681; 43 U. S. C. 1185) authorizes the disposal of materials, including but not limited to sand, stone, gravel, yucca, manzanita, mesquite, cactus, common clay, and timber or other forest products, on public lands of the United States, if the disposal is not otherwise expressly authorized by laws of the United States, including the United States mining laws,

REPRINT AUGUST 22, 1955	Each AA	25	BFS	10
Part 259, Title 43 CFR	Each SO	10	ESO	10
	Each LO	25	Wash. Staff Officers	5 each
Copies to:	Each DFO	5	Asso. Solicitor Parriott	30
	Each DGO	5	Miss Williams GS Room 3219	20
All Regional and Field Solicitors 1 ea.				

ment, entry, or similar rights obtained under the public land laws, no disposal of the materials on the land may be made under the act. If the disposal of materials is consistent with such interest in the land, as in the case of lawful grazing or mining use, the materials may be disposed of under the act under such conditions as the authorized officer, in his discretion, may specify.

(f) The purchaser of materials shall have a prior right to the materials in accordance with the terms and provisions of the contract of purchase as against any subsequent claimant or entryman of the land affected.

(g) The proceeds derived from such sales shall be deposited in the Treasury of the United States and shall be disposed of in the same manner as moneys received from the sale of public lands, except that moneys received from the disposal of materials from school section lands in Alaska, reserved under the act of March 4, 1915 (38 Stat. 1214; 48 U. S. C. 353), as amended, shall be deposited in the United States Treasury for payment annually to the Territory of Alaska, pursuant to the act of August 31, 1950 (64 Stat. 571; 43 U. S. C. 1187).

SALES

§ 259.4 *Sale and appraisal.* (a) All materials to be sold under the provisions of the act shall be appraised and in no case shall they be sold at less than the appraised price. They shall be sold to a responsible qualified purchaser under the appropriate form of contract and upon such additional terms as the signing officer considers advisable.

(b) Where the appraised value of the materials is \$1,000 or less, it may be sold to a responsible qualified applicant or to the highest qualified bidder at public auction or under sealed bids. Sale without competitive bidding may be made in the discretion of the authorized officer where he determines it is unlikely a competitive interest exists. Not more than \$1,000 worth of materials may be sold non-competitively to any one applicant in any period of twelve consecutive months. However, this limitation shall not be applicable to sales of \$1,000 or less of salvage timber or of small isolated tracts of mature or over-mature timber when, in the judgment of the authorized officer, such sale is in the public interest.

(c) If the appraised value exceeds \$1,000, however, a sale may be authorized only to the highest responsible qualified bidder at public auction or under sealed bids.

(d) Offerings of material for sale may be made without the receipt of applications, when such action is in the public interest.

(e) Whenever in his judgment it is in the public interest to do so, the authorized officer may authorize the sale of all of one type or kind of nonvegetative

material on or in specific tracts of land where the quantity of such material cannot be determined prior to extraction or removal thereof. The contract of sale shall set forth the price per unit payable to the United States, the minimum annual payment and such other terms as the authorized officer shall consider advisable. All such sales shall be made competitively to the highest qualified bidder at public auction or under sealed bids, after publication and posting of notice as provided in § 259.7.

§ 259.5 *Who may apply.* An applicant may be (a) an individual, (b) a partnership, (c) an unincorporated association, or (d) a corporation organized under the laws of the United States or of a State or Territory thereof and authorized to transact business in the State or Territory in which the lands are situated.

§ 259.6 *Application; contents.* (a) An application to purchase hereunder may be filed in any office of the Bureau of Land Management. The application should be made on Form 4-059 and contain the following data:

(1) The full name and address of the applicant.

(2) If for a noncompetitive sale, the contract numbers of all noncompetitive contracts entered into by the applicant with the Government under this act during the twelve-month period preceding the filing of the application.

(3) A description of the lands, if surveyed, according to legal subdivision; if the lands are unsurveyed, they must be sufficiently described to permit their identification and the approximate acreage of the lands described.

(4) A detailed statement as to the nature and estimated quantity of each species or kind of material desired, the purpose for which it is desired, its estimated unit and total value, and when the taking could be commenced and completed.

§ 259.7 *Publication and posting.* (a) If any proposed sale for more than \$1,000 notice must be published prior to the date of sale at the expense of the Government in a newspaper published in the county in which the materials are located. If the materials are in two or more counties, notice may be published in any one of the counties. If no newspaper is published in such county, then publication shall be made in a newspaper of general circulation in the county. The notice must be published on the same day weekly for four consecutive weeks.

(b) In any proposed non-competitive sale for \$1,000 or less, the authorized officer may require notice of sale to be posted in such place and for such period as he may prescribe. The authorized officer may require additional notice, including publication in a newspaper at least once but not more than four times. Where the authorized officer determines that a competitive sale of such material

shall be ordered, publication shall be made in a newspaper at least once but not more than four times.

§ 259.8 *Deposits with bids.* A minimum deposit of at least ten percent of the appraised value of the materials to be sold must accompany each bid. However, the authorized officer, in his discretion, may require a deposit in excess of the ten percent minimum. Each deposit must be made by money order, cashier's check or certified check, drawn payable to the Bureau of Land Management except that a bid may be accompanied by a corporate surety bid bond (Form 4-061) in the amount of the required deposit, conditioned upon execution by the bidder, if the contract is awarded to him, of the required contract with the Government within 30 days after the copies of the contract are transmitted to him for execution in accordance with § 259.10 (a). Deposits with bids are required as a guarantee of good faith, and when payment in full is not made in advance the deposit of the successful bidder will be retained until the contract is completed. The deposit will then be returned, provided the purchaser has faithfully performed the terms of the contract. If a bond is furnished and accepted, the deposit will then be credited toward the initial payment under the contract. Deposits made with bids will be returned to the unsuccessful bidders after award of the contract.

§ 259.9 *Action on bids; qualifications of bidders.* (a) If no bid is received within the time specified in the notice of sale for the receipt of bids, the authorized officer, in his discretion, if he determines that no significant rise has occurred in the market price of the materials over the appraised price, may keep open the period for the receipt of bids for all or any part of an additional 90-day period and may sell the materials without readvertising in the following manner:

(1) If, during the extended period for the receipt of bids, a written or oral offer is made for the materials at not less than the advertised minimum appraised price, such offer shall be posted in the office of the authorized officer for a period of not less than 5 days from receipt thereof. If no other offers are received during the five-day posting period, the contract may be awarded to the sole bidder, if qualified.

(2) If, however, during such posting period, other offers are received, then all bidders at the end of the original posting period of five days shall be required to participate in oral competitive bidding at a time and place to be designated by the authorized officer, and the contract will be awarded to the highest qualified bidder.

(b) In any sale of materials, if not paid for in full in advance, the authorized officer may, in his discretion, and before award of the contract, require a financial statement or other information

concerning the ability of the applicant or bidder to perform the contract, as well as data covering plant, equipment, etc.

(c) Based upon evidence of the highest bidder's ability to fulfill the terms of the contract, the authorized officer, in his discretion, may require payments larger than the minimum installments specified in § 259.12 and in the notice of sale, or he may reject the highest bid and award the contract to the next highest qualified bidder. Nothing herein shall be construed as limiting the right to reject any or all bids in the interest of the Government.

(d) In addition to the foregoing, if the successful bidder is (1) a partnership or an association it may be required to file a certified copy of whatever written articles of partnership or association its members may have executed; (2) a corporation, it may be required to file a certified copy of its articles of incorporation. If not organized under the laws of the State or Territory embracing the lands affected, such corporation shall file a certificate by the proper officer of the State or Territory in which the lands are situated showing the corporation's authority to do business in such State or Territory.

§ 259.10 *Contracts.* (a) The Bureau of Land Management shall prepare contracts on Form 4-054 for sales of over \$1,000 and on Form 4-058 for sales of \$1,000 or less. Contracts for the disposal of all of a single type or kind of nonvegetative material, as authorized by § 259.4 (e) shall be prepared on Form 4-1164 and shall be signed on behalf of the United States by the authorized officer.

(b) If the successful bidder fails to sign and return the contract and furnish a satisfactory bond within 30 days, or if he otherwise fails to comply with the applicable regulations, that part of his deposit representing the minimum deposit required by the notice of sale, shall be retained as liquidated damages and disposed of as other receipts under the act. In such case the contract may be awarded to the next highest qualified bidder without readvertisement.

§ 259.11 *Bond.* In all sales in which payment in full is not made in advance, a bond of not less than 15 percent of the contract price of materials sold in the public-land States, or 25 percent of the contract price of materials sold in Alaska, must be furnished by the purchaser. In any sale the authorized officer, in his discretion, may require a bond in excess of that amount. Bonds hereunder shall be executed on Form 4-057. The bond must be that of a corporate surety shown on an approved list issued by the Treasury Department, or a cash bond. United States bonds, or cash, may be furnished in lieu of a surety bond, if accompanied by a proper personal bond and power of attorney authorizing the Secretary, in case of default, to collect, sell, assign, or transfer the said bonds without notice, at public or private sale, free from any equity of redemption, and without appraisal or valuation.

§ 259.12 *Payment.* (a) No part of the material sold under the contract may be severed, extracted, or removed unless advance payment has been made as hereinafter provided.

(b) In all sales in which the determination of the total amount due can be made only after severance or extraction has been completed, the total advance payments required to be made must be sufficient to cover the estimated quantity of the materials sold under the contract. Each such payment shall be held in suspense until the quantity of materials covered thereby has been determined. If thereafter it be determined that the last advance payment under the contract is in excess of the value of the materials, such excess shall be returned to the purchaser.

(c) In any sale of \$1,000 or less the authorized officer, in his discretion, may require payment in full at the time of execution of the contract or may permit payment in advance of severance or extraction to be made in not to exceed five approximately equal installments.

(d) In sales of more than \$1,000 and not in excess of \$100,000, the authorized officer may require full payment in advance, or may permit payment in advance of severance or extraction in not to exceed ten approximately equal installments.

(e) In any sale of over \$100,000, the methods and conditions of payment shall be determined at the time such sale is authorized provided that the amount of the installments so fixed shall be not less than \$10,000 each.

(f) In any sale of materials in the public-land States for which payment in installments is permitted, the purchaser shall make an initial payment equivalent to two installments as follows: One installment prior to the approval of the contract and the second installment within six months thereafter, or prior to the commencement of operations thereunder, whichever is earlier. The first installment shall be retained by the Government as additional security for the full and faithful performance of the contract, and shall be applied in whole or in part toward the final installment thereunder. On the basis of his initial payment, the purchaser may sever or extract materials under the contract of a value not to exceed one-half of such initial payment. The remaining installments shall become due and payable without prior notice whenever the value of the materials severed or extracted under the contract shall equal the sum of the payments made by the purchaser (exclusive of one-half of the initial payments, as provided in this paragraph).

(g) In any sale of materials in Alaska for which payment in installments is permitted, the purchaser shall make payment of one installment prior to the approval of the contract. The purchaser may sever or extract materials under the contract of a value not to exceed such payment. The remaining installments shall become due and payable without prior notice whenever the value

of the materials severed or extracted under the contract shall equal the sum of the payments made by the purchaser.

(h) All payments hereunder shall be made by money order, cashier's check or certified check drawn payable to the Bureau of Land Management.

§ 259.13 *Passage of title; risk of loss.* The title to the material covered by the contract will pass to the purchaser only upon payment for, and severance or extraction of, the material. The purchaser shall assume complete risk of loss for all materials, the title to which has passed. If material covered by the contract, title to which has not passed, is damaged or destroyed by fire or otherwise, the purchaser shall be liable for all loss suffered if the purchaser, his contractors or subcontractors, or the employees of any of them, are directly or indirectly responsible for the damage. If such material is damaged or destroyed without fault on their part, the purchaser shall be liable for the loss sustained to the extent that it is caused by his failure to sever, extract or remove the damaged material as expeditiously as possible under the existing circumstances and the terms of the contract.

§ 259.14 *Reappraisals.* (a) No reappraisals of materials sold under the contract will be made during the life of the contract if the term of the contract is for two years or less. If the term is for more than two years, prior to the commencement of the third and each subsequent year, the material sold under the contract, but not yet severed or extracted, shall be reappraised by the Government in accordance with standard appraisal techniques. Upon reappraisal, the contract unit price of any material severed or extracted during the new contract year shall be the same percentage of the new appraised price as the original contract price was of the original appraised price.

(b) Notice of the adjusted prices to be fixed under the contract shall be sent registered mail by the authorized officer to the purchaser at least thirty days before the beginning of the contract year. Not later than thirty days after the receipt of notice, the purchaser may submit his objections, if any, in writing to the authorized officer. In the absence of such objection, or if the authorized officer does not find the objections sufficient and so advises the purchaser, or, subject to the final determination of an appeal, if taken, from the decision of reappraisal of the materials, the new prices shall be in effect and shall govern the payments to be made for all materials severed or extracted during the new contract year.

§ 259.15 *Assignments.* The purchaser may assign the contract or any interest therein only with the consent of the authorized officer. The proposed assignment shall be forwarded to the authorized officer in triplicate within thirty days from the date of its execution. Except as hereinafter provided, the assignment shall contain all the terms and conditions agreed upon by the parties

FREE USE

thereto, the assignee's agreement to be bound by the terms of the contract, and shall be accompanied by a proper bond if one has been required under the contract, or the agreement of the surety to remain bound after the approval of the assignment, or, if no bond has been required under the contract, by an agreement to furnish and maintain a proper bond, if required. An assignment to a lending agency as security for a loan may provide that the assignee shall receive merely the purchaser's title to the contract without assuming any liability thereunder, and that the assignor shall remain bound to perform under the contract. In such case, before approval of the assignment, the assignor must submit the written consent of his surety to remain bound under the terms of the contract. Nothing herein shall limit or restrict the right of the Government to suspend operations under, or terminate or cancel, the contract in accordance with §§ 259.16 and 259.19.

§ 259.16 Termination of contracts. (a) The authorized officer may terminate a contract at the request of the purchaser upon satisfactory showing that the termination will not adversely affect the public interest, and that all charges due the Government thereunder have been paid.

(b) Any contract, unexecuted in whole or in part, for disposal under section 4 of the act of materials from lands, title to which is transferred to a future State upon its admission to the Union, and which is situated within its boundaries, may be terminated or adopted by such State in such manner as the State may by law determine.

§ 259.17 Extension of time. The authorized officer, in his discretion, upon written request by the purchaser, not less than 90 days nor more than 150 days before expiration of the contract, may grant an extension of time within which to complete the contract if the purchaser shows that his delay in performance is due to circumstances beyond his control and that the extension will not prejudice the Government's interest. No extension may be granted, except in contracts for one year, without reappraisal of the materials remaining to be taken under the contract. Such reappraisals shall be made in accordance with the provisions of § 259.14, except that, in granting an extension of any contract whose original term was 2 years or more, the adjusted price of the materials to be severed or extracted during the extended term shall not be less than the contract price prevailing at the end of the original contract term.

§ 259.18 Removal of personal property upon termination of contract. (a) Upon termination of a contract the purchaser shall have the right at any time within one year thereafter to remove his equipment, improvements, or other personal property from the Government land, provided all charges due the United States under the contract have been paid. The authorized officer, in his dis-

cretion, may grant the purchaser's request for an extension of time for removal. Any improvements, equipment, or personal property remaining on the Government land at the end of such period shall become the property of the United States.

(b) Improvements necessary for the severance, extraction or removal of other government-owned materials may be left on the Government land for such period and under such terms as may be prescribed by the authorized officer.

§ 259.19 Default, suspension, cancellation, damages and expenses incurred by Government chargeable to purchaser.

(a) If any of the requirements of the contract are disregarded, the officer in charge, after giving oral or written notice, may suspend the purchaser's operations until there is satisfactory compliance therewith.

(b) If, after notice has been given, the purchaser fails to comply with all of the provisions of the contract, the authorized officer shall serve the purchaser with written notice requiring performance thereof within 30 days under penalty of cancellation of the contract and forfeiture of the bond and all monies paid. If the purchaser continues in default after the 30 days, the authorized officer may cancel the contract.

(c) The purchaser shall be liable for damage resulting from the breach of contract, including depreciation in the value of the remaining material based upon a determination by the authorized officer, and for any expense incurred by the Government by reason of the continued default.

§ 259.20 Duration of contract. (a) The maximum periods which shall be allowed after the date of the contract, for the severance or extraction of the materials purchased, except as the contract may be extended in accordance with § 259.17, shall be as follows: For sales of \$1,000 or less, one year; for sales of over \$1,000 but not exceeding \$10,000, two years; for sales over \$10,000 but not exceeding \$100,000, five years; and for sales exceeding \$100,000, such term as shall be fixed in the notice of sale by the authorized officer, except that in any contract for the sale of timber from an intermediate cutting the term of such contract may be fixed by the authorized officer in his discretion in the notice of sale. The authorized officer may provide that contracts shall have maximum periods longer than those prescribed above in the case of timber sales in Alaska under this part, where in his opinion the allowance of such longer periods will promote the development of the Territory, and such period shall be stated in the notice of sale where one is required.

(b) Contracts on Form 4-1164 shall be for a term of not more than 5 years, as fixed in the notice of sale, and for so long thereafter as the material subject to the contract is being produced or removed in paying quantities.

§ 259.21 Free-use privilege; limitations. (a) Any person, or any association or corporation not organized for profit, may be permitted to take and remove, without charge, materials subject to the act, for use other than for commercial or industrial purposes or resale. Such permittee is granted a right to remove materials while the permit remains in force and, in accordance with the provisions of the permit, as against a subsequent applicant who may wish to obtain the same material by purchase. However, the materials may not be removed by the permittee after the land has been included in a valid claim by reason of settlement, entry, or similar rights obtained under the public land laws.

(b) Authority under other acts also exists for the free use of timber, under specified circumstances, (1) in certain states by settlers on public lands, citizens and bona fide residents of the State, and corporations doing business in the State (Part 284 of this chapter), and (2) in Alaska by actual settlers, residents, individual miners, prospectors for minerals, churches, hospitals; and charitable institutions (Part 79 of this chapter). Free-use timber applications may be considered under the act, rather than under the statutes and regulations mentioned, only when the applicants cannot qualify under such statutes and regulations, as in the case of any Federal, State, or territorial agency, unit, or subdivision, including municipalities, and Alaskan non-profit associations and corporations which are not engaged in church, hospital, or charitable activities.

(c) The material applied for must be for the applicant's own use and only one free-use permit may be issued to any applicant in any calendar year. No green trees of saw-timber size will be disposed of under free-use permit in the States unless it is in the interest of the Government. Disposal of trees of saw-timber size in Alaska is permitted. A free-use permit may be granted for timber of a stumpage value not in excess of \$25, or for other materials subject to disposal under the act of an in-place value not in excess of \$25 in any calendar year. However, if it is in the interest of the Government to dispose of timber or other materials applied for under the act, a permit may be granted for materials not in excess of \$200 in value. The material removed may not be bartered or sold.

(d) A free-use permit may be issued to any Federal, State, or Territorial agency, unit, or subdivision, including municipalities, without limitation as to the number of permits or as to the value of the materials to be severed, extracted, or removed, provided that the applicant makes a satisfactory showing to the authorized officer that such materials will be used for a public project. Such permits shall constitute a superior right to remove the materials and will continue in full force and effect, in accordance with its terms and provisions, as against any subsequent claim to or entry of the lands.

(e) Free-use permits shall not be issued where the applicant owns or controls an adequate supply of the material to meet his needs.

(f) All materials disposed of under free use shall be severed, extracted, or removed in accordance with approved forestry and conservation practices so as to preserve to the maximum extent feasible all scenic, recreational, watershed and other values of the land and resources. In the free-use disposal of timber and other vegetative materials cutting and removal shall be accomplished in such manner as to leave the stand in condition for continuous production.

§ 259.22 *Application for permit.* An application for permit, in duplicate, must be made on Form 4-056 and filed in any office or with any employee of the Bureau of Land Management authorized to issue such permit. However, a free use permit on Form 4-1192 may be granted for the removal of not more than three Christmas trees upon oral or written request.

§ 259.23 *Issuance and cancellation of permit; removal of materials; bond.* (a) A permit may be issued and shall incorporate the provisions, if any, governing the selection, removal, and use of the materials. One copy of Form 4-056 shall be returned to the applicant showing the approval or rejection of such application.

(b) The authorized officer may cancel a permit if the permittee fails to observe its terms and conditions or the regulations, or if the permit has been issued erroneously.

(c) No materials shall be removed until the permit is issued. A bond satisfactory to the authorized officer may be required as a guarantee of faithful performance of the provisions of the permit and applicable regulations.

§ 259.24 *Removal by agent.* A free-use permittee may procure the materials by agent. Such agent shall not, however, be paid more than fair compensation for the time, labor, and money expended in procuring the material and processing it, and, no charge shall be made for the material itself. No part of the material may be used in payment for services in obtaining or processing it.

§ 259.25 *Termination of permit; extensions; notice of completion of removal operations.* Permits shall be granted for periods not to exceed one year and shall terminate on the expiration dates shown therein unless extended by the signing officer. An extension not to exceed one year may be granted by the authorized officer. However, the authorized officer may grant permits to any Federal,

State, or Territorial agency, unit or subdivision, including municipalities, for such periods as he may deem appropriate. The permittee must notify the officer in charge upon completion of removal.

GENERAL

§ 259.26 *Trespass; penalty for unauthorized removal of material.* The severance, extraction, or removal of materials from public land under the jurisdiction of the Department of the Interior, except when authorized by law and the regulations of the Department is an act of trespass. Trespassers will be liable in damages to the United States, and will be subject to criminal prosecution for such unlawful acts.

§ 259.27 *Appeals.* A party aggrieved by any official action regarding his application, contract, or permit, may appeal from the decision of any subordinate official to the Director of the Bureau of Land Management, and from the Director's decision to the Secretary of the Interior pursuant to the Rules of Practice (Part 221 of this chapter).

**TITLE 43—PUBLIC LANDS:
INTERIOR**

**Chapter I—Bureau of Land Management,
Department of the Interior**

[Circular 1922]

PART 259—DISPOSAL OF MATERIALS

SALES

1. Section 259.10 (a) is amended to read as follows:

§ 259.10 *Contracts.* (a) The Bureau of Land Management shall prepare contracts on Form 4-054 for sales over \$1,000 and on Form 4-058 or 4-058a for sales of \$1,000 or less. Contracts for the disposal of all of a single type of non-vegetative material as authorized by § 259.4 (e) shall be prepared on Form 4-1164 and shall be signed on behalf of the United States by the authorized officer.

2. Section 259.11 is amended to read as follows:

§ 259.11 *Performance bonds.* A bond of not less than 15 percent of the contract price will be required for contracts in excess of \$2,000. While for contracts of less than \$2,000 in lieu of a surety bond the initial deposit may be retained as a cash bond until the contract is terminated. In any sale the authorized officer may require a bond in excess of that amount. The bond may be that of a corporate surety shown on an approved list issued by the Treasury Department, or a cash bond.

(Sec. 1, 61 Stat. 681; 43 U. S. C. 1185)

CLARENCE A. DAVIS,
Acting Secretary of the Interior.

AUGUST 19, 1955.

[F. R. Doc. 55-6884; Filed, Aug. 24, 1955;
8:47 a. m.]

Published in 20 F. R. August 25, 1955

Copies to	Each AA	25	BFS	10
	Each SO	10	ESO	10
	Each LO	25	Wash. Staff Officers	5 each
	Each DFO	5	Asso. Solicitor Parriott	30
	Each DGO	5	Miss Williams GS Room 3219	20
All Regional and Field Solicitors	1 ea.			

**TITLE 43—PUBLIC LANDS:
INTERIOR**

**Chapter I—Bureau of Land Manage-
ment, Department of the Interior**

[Circular No. 1923]

**PART 194—POTASSIUM PERMITS AND LEASES
EXTENSION OF PERMITS**

Section 194.11 is amended by adding
the following:

The application for extension must
be accompanied by a filing fee of \$10,
which will be retained as a service charge
even though the application is later
withdrawn or rejected.

(Sec. 32, 41 Stat. 450; 30 U. S. C. 189)

FRED G. AANDAHL,
Acting Secretary of the Interior.

AUGUST 25, 1955.

[F. R. Doc. 55-7076; Filed, Aug. 31, 1955;
8:46 a. m.]

Published in 20 F. R. September 1, 1955

Copies to	Each AA	25	BFS	10	
	Each SO	10	ESO	10	
	Each LO	25	Wash. Staff Officers		5 each
	Each DFO	5	Asso. Solicitor Parriott		30
	Each DGO	5	Miss Williams GS Room 3219		20
All Regional and Field Solicitors		1 ea.			

**TITLE 43—PUBLIC LANDS:
INTERIOR**

**Chapter I—Bureau of Land Manage-
ment, Department of the Interior**

[Circular No. 1924]

**PART 191—GENERAL REGULATIONS APPLI-
CABLE TO MINERAL PERMITS, LEASES, AND
LICENSES**

FILING FEES

Section 191.11 is amended to read as follows:

§ 191.11 *Filing fees.* Offers for non-competitive oil and gas leases and all applications for prospecting permits, leases or licenses, excepting licenses to relief agencies as provided in § 193.30 of this chapter, must be accompanied by a filing fee of \$10 for each application or offer. Such a fee will be retained as a service charge even though the application or offer should be rejected or withdrawn in whole or in part.

FRED G. AANDAHL,
Acting Secretary of the Interior.

AUGUST 25, 1955.

[F. R. Doc. 55-7077; Filed, Aug. 31, 1955;
8:47 a. m.]

Published in 20 F. R. September 1, 1955

Copies to	Each AA	25	BFS	10	
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All Regional and Field Solicitors		1 ea.			

INT.-DUP. SEC., WASH., D.C. 86389

**TITLE 43—PUBLIC LANDS:
INTERIOR**

**Chapter I—Bureau of Land Management,
Department of the Interior**

[Circular No. 1925]

**PART 196—PHOSPHATE LEASES AND USE
PERMITS**

MISCELLANEOUS AMENDMENTS

Replaced by 2005

*OK 10/16
sup 10/10
Bx 10/10
WAK*

The first paragraph of § 196.7 is amended; a new paragraph is added at the end of § 196.13; and § 196.18 (b) is amended to read as follows:

§ 196.7 *Application for lease.*¹ Applications shall be filed in the proper land office in the State or Territory, or for lands in a State in which there is no land office, shall be filed with the Bureau of Land Management, Washington 25, D. C., except the applications for lands in North or South Dakota shall be filed in the land office at Billings, Montana; applications for lands in Nebraska or Kansas, shall be filed in the land office at Cheyenne, Wyoming; and for lands in Oklahoma, in the land office at Santa Fe, New Mexico. A filing fee of \$10, which will be retained as a service charge in any event, must accompany each application. A noncompetitive lease application must also be accompanied by the first year's rental of twenty-five cents per acre for each acre of land or part thereof included in the lease application. No specific form is required but an application should cover the following points:

§ 196.13 *Assignments of leases: sub-leases.* * * *

(d) An application for approval of any instrument transferring a lease, or interest therein, must be accompanied by a service fee of \$10. An application not accompanied by such a fee will not be accepted. The fee will not be returned even though the application is later withdrawn or rejected.

§ 196.18 *Use permits for additional lands.* * * *

(b) Applications for permits for such additional land shall be filed in the office specified in § 196.7. A filing fee of \$10, which will be retained as a service charge in any event, must accompany each application. Such applications must set forth the specific reasons why the additional land is necessary to the lessee for the use named, describe the land desired in accordance with § 196.7 (d), and also set forth the reasons why the land is desirable and adapted to the use named, either in point of location, topography, or otherwise, and that it is unoccupied and unappropriated. The application must also contain an agreement to pay the annual charge prescribed in the permit. Use permits will be issued on Form 4-1111 and dated as of the first day of the month after its issuance unless the lessee requests that it be dated the first day of the month of issuance.

FRED G. AANDAHL,
Acting Secretary of the Interior.

AUGUST 25, 1955.

[F. R. Doc. 55-7078; Filed, Aug. 31, 1955;
8:47 a. m.]

¹ 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

Published in 20 F. R. September 1, 1955

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	Each LO	25	Wash. Staff Officers		5 each
	Each DFO	5	Asso. Solicitor Parriott		30
	Each DGO	5	Miss Williams GS Room 3219		20
All Regional and Field Solicitors	1 ea.				

THE 1911-1912

REPORT

OF THE

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LAND OFFICE

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the 1st day of January 1911
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LAND OFFICE

THE 1911-1912

1911	1912	1913	1914	1915	1916	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	1931	1932	1933	1934	1935	1936	1937	1938	1939	1940	1941	1942	1943	1944	1945	1946	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956	1957	1958	1959	1960	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050	2051	2052	2053	2054	2055	2056	2057	2058	2059	2060	2061	2062	2063	2064	2065	2066	2067	2068	2069	2070	2071	2072	2073	2074	2075	2076	2077	2078	2079	2080	2081	2082	2083	2084	2085	2086	2087	2088	2089	2090	2091	2092	2093	2094	2095	2096	2097	2098	2099	2100	2101	2102	2103	2104	2105	2106	2107	2108	2109	2110	2111	2112	2113	2114	2115	2116	2117	2118	2119	2120	2121	2122	2123	2124	2125	2126	2127	2128	2129	2130	2131	2132	2133	2134	2135	2136	2137	2138	2139	2140	2141	2142	2143	2144	2145	2146	2147	2148	2149	2150	2151	2152	2153	2154	2155	2156	2157	2158	2159	2160	2161	2162	2163	2164	2165	2166	2167	2168	2169	2170	2171	2172	2173	2174	2175	2176	2177	2178	2179	2180	2181	2182	2183	2184	2185	2186	2187	2188	2189	2190	2191	2192	2193	2194	2195	2196	2197	2198	2199	2200	2201	2202	2203	2204	2205	2206	2207	2208	2209	2210	2211	2212	2213	2214	2215	2216	2217	2218	2219	2220	2221	2222	2223	2224	2225	2226	2227	2228	2229	2230	2231	2232	2233	2234	2235	2236	2237	2238	2239	2240	2241	2242	2243	2244	2245	2246	2247	2248	2249	2250	2251	2252	2253	2254	2255	2256	2257	2258	2259	2260	2261	2262	2263	2264	2265	2266	2267	2268	2269	2270	2271	2272	2273	2274	2275	2276	2277	2278	2279	2280	2281	2282	2283	2284	2285	2286	2287	2288	2289	2290	2291	2292	2293	2294	2295	2296	2297	2298	2299	2300	2301	2302	2303	2304	2305	2306	2307	2308	2309	2310	2311	2312	2313	2314	2315	2316	2317	2318	2319	2320	2321	2322	2323	2324	2325	2326	2327	2328	2329	2330	2331	2332	2333	2334	2335	2336	2337	2338	2339	2340	2341	2342	2343	2344	2345	2346	2347	2348	2349	2350	2351	2352	2353	2354	2355	2356	2357	2358	2359	2360	2361	2362	2363	2364	2365	2366	2367	2368	2369	2370	2371	2372	2373	2374	2375	2376	2377	2378	2379	2380	2381	2382	2383	2384	2385	2386	2387	2388	2389	2390	2391	2392	2393	2394	2395	2396	2397	2398	2399	2400	2401	2402	2403	2404	2405	2406	2407	2408	2409	2410	2411	2412	2413	2414	2415	2416	2417	2418	2419	2420	2421	2422	2423	2424	2425	2426	2427	2428	2429	2430	2431	2432	2433	2434	2435	2436	2437	2438	2439	2440	2441	2442	2443	2444	2445	2446	2447	2448	2449	2450	2451	2452	2453	2454	2455	2456	2457	2458	2459	2460	2461	2462	2463	2464	2465	2466	2467	2468	2469	2470	2471	2472	2473	2474	2475	2476	2477	2478	2479	2480	2481	2482	2483	2484	2485	2486	2487	2488	2489	2490	2491	2492	2493	2494	2495	2496	2497	2498	2499	2500	2501	2502	2503	2504	2505	2506	2507	2508	2509	2510	2511	2512	2513	2514	2515	2516	2517	2518	2519	2520	2521	2522	2523	2524	2525	2526	2527	2528	2529	2530	2531	2532	2533	2534	2535	2536	2537	2538	2539	2540	2541	2542	2543	2544	2545	2546	2547	2548	2549	2550	2551	2552	2553	2554	2555	2556	2557	2558	2559	2560	2561	2562	2563	2564	2565	2566	2567	2568	2569	2570	2571	2572	2573	2574	2575	2576	2577	2578	2579	2580	2581	2582	2583	2584	2585	2586	2587	2588	2589	2590	2591	2592	2593	2594	2595	2596	2597	2598	2599	2600	2601	2602	2603	2604	2605	2606	2607	2608	2609	2610	2611	2612	2613	2614	2615	2616	2617	2618	2619	2620	2621	2622	2623	2624	2625	2626	2627	2628	2629	2630	2631	2632	2633	2634	2635	2636	2637	2638	2639	2640	2641	2642	2643	2644	2645	2646	2647	2648	2649	2650	2651	2652	2653	2654	2655	2656	2657	2658	2659	2660	2661	2662	2663	2664	2665	2666	2667	2668	2669	2670	2671	2672	2673	2674	2675	2676	2677	2678	2679	2680	2681	2682	2683	2684	2685	2686	2687	2688	2689	2690	2691	2692	2693	2694	2695	2696	2697	2698	2699	2700	2701	2702	2703	2704	2705	2706	2707	2708	2709	2710	2711	2712	2713	2714	2715	2716	2717	2718	2719	2720	2721	2722	2723	2724	2725	2726	2727	2728	2729	2730	2731	2732	2733	2734	2735	2736	2737	2738	2739	2740	2741	2742	2743	2744	2745	2746	2747	2748	2749	2750	2751	2752	2753	2754	2755	2756	2757	2758	2759	2760	2761	2762	2763	2764	2765	2766	2767	2768	2769	2770	2771	2772	2773	2774	2775	2776	2777	2778	2779	2780	2781	2782	2783	2784	2785	2786	2787	2788	2789	2790	2791	2792	2793	2794	2795	2796	2797	2798	2799	2800	2801	2802	2803	2804	2805	2806	2807	2808	2809	2810	2811	2812	2813	2814	2815	2816	2817	2818	2819	2820	2821	2822	2823	2824	2825	2826	2827	2828	2829	2830	2831	2832	2833	2834	2835	2836	2837	2838	2839	2840	2841	2842	2843	2844	2845	2846	2847	2848	2849	2850	2851	2852	2853	2854	2855	2856	2857	2858	2859	2860	2861	2862	2863	2864	2865	2866	2867	2868	2869	2870	2871	2872	2873	2874	2875	2876	2877	2878	2879	2880	2881	2882	2883	2884	2885	2886	2887	2888	2889	2890	2891	2892	2893	2894	2895	2896	2897	2898	2899	2900	2901	2902	2903	2904	2905	2906	2907	2908	2909	2910	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**TITLE 43—PUBLIC LANDS:
INTERIOR**

**Chapter I—Bureau of Land Manage-
ment, Department of the Interior**

[Circular No. 1926]

**PART 101—GENERAL REGULATIONS INVOLV-
ING APPLICATIONS AND ENTRIES**

PART 216—PAYMENTS

PART 285—TIMBER AND STONE ENTRIES

REVOCATION OF CERTAIN MATERIAL

Sections 101.16 and 216.11 and Part
285 are hereby revoked in their entirety.

ORME LEWIS,

Acting Secretary of the Interior.

AUGUST 26, 1955.

[F. R. Doc. 55-7079; Filed, Aug. 31, 1955;
8:47 a. m.]

Published in 20 F. R. September 1, 1955

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Bureau of Land Management

TITLE 43—PUBLIC LANDS:
INTERIOR
Chapter I—Bureau of Land Manage-
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Billings, Montana

(Circular No. 1927)

Part 192—Oil and Gas Leases

Replaced by 2002
(11/58)

20
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192.2 Helium.
192.3 Acreage limitations on leases.
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192.5 Lands within one mile of naval petroleum or helium reserves.
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AUTHORITY: §§ 192.1 to 192.161 issued under sec. 32, 41 Stat. 450; 30 U. S. C. 189.

SOURCE: §§ 192.1 to 192.161 appear at 19 F. R. 9011, Dec. 23, 1954, except as otherwise noted.

GENERAL PROVISIONS

§ 192.1 *Applicability of amendatory act to existing leases.* Prior to the filing of the notice of election hereinafter referred to, the act of August 8, 1946 (60 Stat. 950; 30 U. S. C. 181) applies to leases issued prior to the date of that act only where the amendatory act so

provides. The owner of any lease issued prior to August 8, 1946, may elect pursuant to section 15 to come entirely under the provisions of that act by filing a notice of election to have his lease governed by the amendatory act, accompanied by the consent of the surety if there is a bond covering the lease. A notice of election so filed shall constitute an amendment of all provisions of the lease to conform with the provisions of the amendatory act and the regulations issued hereunder.

§ 192.2 *Helium.* The ownership of and the right to extract helium from all gas produced from lands leased or otherwise disposed of under the act have been reserved to the United States. Appropriate provision is made in leases with respect to the recovery of helium.

§ 192.3 *Acreage limitations on leases.* (a) No person, association, or corporation, except as in the act provided, may hold more than 46,080 acres in any one State, or more than 100,000 acres in the Territory of Alaska, whether directly through the ownership of leases or interests in leases, or indirectly as a member of an association or associations, or as a stockholder of a corporation, or corporations, holding leases or interests therein or both. All leases committed to any unit or cooperative plan approved or prescribed by the Secretary of the Interior shall not be included in computing accountable acreage under section 27 of the act. All leases operated under an operating, drilling, or development contract approved by the Secretary of the Interior pursuant to section 17 (b) of the act, and interests thereunder, other than communitization agreements, and all leases issued under sections 18 and 19 of the act shall be excepted in determining the lessees' and the operators' acreage holdings or control under the provisions of any section of this act.

(b) In computing acreage holdings or control, the accountable acreage of a party owning an undivided interest in a lease shall be such party's proportionate part of the total lease acreage. Likewise, the accountable acreage of a party owning an interest in a corporation or association shall be his proportionate part of the corporation's or association's ac-

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countable acreage. Parties owning a royalty or other interest determined by or payable out of a percentage of production from a lease will be charged with a similar percentage of the total lease acreage.

(c) No lease will be issued and no transfer will be approved until it has been shown pursuant to the requirements of § 192.42 (e) (4) that the lessee or transferee is entitled to hold the acreage. Any party found to hold or control countable acreage computed in accordance with the principles above set forth in excess of the prescribed limitations shall be given thirty days within which to file proof of the reduction of his holdings or control so as to conform with the prescribed limitation.

[Circ. 1894, 19 F. R. 9275, Dec. 29, 1954]

§ 192.4 *Acreage limitations on options.* (a) Acreage held under a nonrenewable option, valid only for three years or such longer period as may be authorized by the Secretary, shall not be chargeable under § 192.3, but no optionee may hold options at any one time for more than 200,000 acres in any one State, or in the Territory of Alaska.

(b) No such option shall be taken for more than three years without the prior approval of the Secretary of the Interior, except that an option hereafter taken on a lease application or offer may be for the period of time until issuance of the lease and three years thereafter. Where it is sought to obtain options for periods in excess of those provided in the preceding sentence, an application should be filed with the Director, Bureau of Land Management, accompanied by a complete showing as to the special or unusual circumstances which are believed to justify approval of the application by the Secretary.

(c) Within the meaning of this section, options may be taken only on lands embraced in leases and offers or applications for leases and the acreage included in any such option taken upon an application or offer for a lease shall be chargeable from and after the date of such option.

(d) It shall be permissible for any such option to provide that where all or any part of the land covered thereby is included in a cooperative or unit plan (as defined in § 192.20) duly executed by the parties and submitted to the Secretary for final approval prior to the expiration of the three-year option period, then, as to that part of the land covered by said option which is included in said cooperative or unit plan, such option shall not expire until a date 30 days after the date of final approval or disapproval by the Secretary of that cooperative or unit plan.

(e) Each optionee must file with the Director, Bureau of Land Management, within 90 days after December 31 and June 30 of each year, a statement showing as of the prior December 31 and June 30, respectively, (1) name of optioner and serial number of lease, application or offer for lease subject to the option (2) date and expiration date of each option, (3) number of acres covered by each option, and (4) aggregate number of options held in each State and total acreage thereof.

(f) If the statement shows or it is otherwise ascertained that the optionee holds options in excess of the prescribed limitation, he will be given 30 days within which to file proof of reduction of his option holdings to the limitations prescribed by the act.

[Circ. 1894, 19 F. R. 9275, Dec. 29, 1954]

§ 192.5 *Lands within one mile of naval petroleum or helium reserves.* No oil and gas lease will be issued for land within one mile of the exterior boundaries of a naval petroleum or a helium reserve, unless the land is being drained of its oil or gas deposits or helium content by wells on privately owned land or unless it is determined by the authorized officer, after consultation with the agency exercising jurisdiction over the reserve, that operations under such a lease will not adversely affect the reserve through drainage from known productive horizons.

§ 192.6 *Boundaries of known geologic structures and productive limits of producing oil or gas fields and deposits.* The Director of the Geological Survey will determine the boundaries of the known geologic structures of producing oil or gas fields and, where necessary to effectuate the purposes of the act, the productive limits of producing oil or gas deposits as such limits existed on August 8, 1946. Maps or diagrams showing the boundaries of known geologic structures of producing oil or gas fields and of the productive limits of producing oil or gas deposits will be placed on file in the appropriate land office, and office of the oil and gas supervisor. Any lessee or his operator may apply to have a determination made as to whether or not the land upon which he intends to drill a well is inside or outside the productive limits of a producing oil or gas deposit. The application should be accompanied by all available geologic data which in his opinion have a bearing on the matter.

§ 192.7 *Agreements to compensate for drainage.* Upon a determination by the Director of the Geological Survey that lands owned by the United States are being drained of oil or gas by wells drilled on adjacent lands, the authorized officer of the Bureau of Land Management, may execute agreements with the owners of adjacent lands whereby the United States, or the United States and its lessees, shall be compensated for such drainage, such agreements to be made with the consent of any lessee affected thereby. The precise nature of any agreement will depend on the conditions and circumstances involved in the particular case.

§ 192.8 *Protection of leased lands from drainage.* (a) Where land in any lease is being drained of its oil or gas content by a well either on a Federal lease issued at a lower rate of royalty or on land not the property of the United States, the lessee must drill and produce all wells necessary to protect the leased lands from drainage. In lieu of drilling such wells, the lessee may, with the consent of the Director of the Geological Survey, pay compensatory royalty in the amount determined in accordance with 30 CFR 221.21.

(b) The payment of compensatory royalty under this section or § 192.7 shall extend the primary or extended term of any lease for the period during which such compensatory royalty is paid, and for a period of one year from the discontinuance of such payment, and for so long thereafter as oil or gas is produced in paying quantities.

[Circ. 1894, 19 F. R. 9275, Dec. 29, 1954]

§ 192.9 *Leases for wildlife refuge lands.* No noncompetitive oil and gas lease under the act will be issued for lands within a wildlife refuge (a) unless those lands are subjected to an approved cooperative or unit plan, and (b) unless the lease contains a provision which prohibits drilling or prospecting on the refuge lands except when consented to by the Secretary of the Interior upon the advice of the Fish and Wildlife Service. Subject to the same two conditions, competitive leases also may issue for refuge lands. Even if these conditions are not met, competitive leases may nevertheless issue if Fish and Wildlife Service reports that oil and gas development may be conducted without destroying the usefulness of the lands as a sanctuary for wildlife, or, in the absence of such a report, wherever the Secretary determines that the national interest in securing the contemplated oil and gas production outweighs the importance of maintaining the refuge as a sanctuary for wildlife.

COOPERATIVE CONSERVATION PROVISIONS

§ 192.20 *Cooperative or unit plans.*¹ The act authorizes lessees and their representatives to unite with each other, or jointly or separately with others, in collectively adopting and operating under a cooperative or unit plan of development or operation of any oil or gas pool, field, or like area, or any part thereof (whether or not any part of such pool, field, or like area is then subject to any cooperative or unit plan of development or operation). The agreement must be for the purpose of more properly conserving the natural resources of any such oil or gas pool, field, or area covered thereby and must be determined and certified by the Secretary of the Interior to be necessary or advisable in the public interest. The Secretary, with the consent of the lessees, is authorized to establish, alter, change or revoke drilling, producing, rental, minimum royalty, and royalty requirements of the leases and to make such regulations with reference to such leases as he may deem necessary or proper to secure the protection of the public interest. All leases committed to any unit or cooperative plan approved or prescribed by the Secretary of the Interior shall be excepted in determining acreage charges.

§ 192.21 *Application for approval of plan.* The procedure in obtaining approval of a cooperative or unit plan of development including suggested text of an agreement acceptable to the Department is contained in 30 CFR Part 226, "Unit or Cooperative Agreements". All applications to unitize and all docu-

¹For the extension of leases committed to a unit plan, see § 192.122.

ments incident thereto shall be filed in the office of the oil and gas supervisor, Geological Survey, for the region in which the unit area is situated.

§ 192.22 *Communitization or drilling agreements.* (a) The Secretary is authorized when separate tracts under lease cannot be independently developed and operated in conformity with an established well-spacing or well-development program, to approve communitization or drilling agreements for the lease or any portion thereof with other lands, whether or not owned by the United States, when in the public interest. Operations or production pursuant to such an agreement shall be deemed to be operations or production as to each lease committed thereto.

(b) Preliminary requests to communitize separate tracts shall be filed in triplicate with the oil and gas supervisor and executed agreements shall be submitted in sufficient number to permit retention of five copies by the Department after approval.

(c) The agreement shall describe the separate tracts comprising the drilling or spacing unit, shall show the apportionment of the production or royalties to the several parties and the name of the operator, and shall contain adequate provisions for the protection of the interests of all parties, including the United States. The agreement must be signed by or in behalf of all necessary parties and will be effective only after approval by the Secretary of the Interior as provided therein.

§ 192.23 *Approval of operating, drilling, or development contracts without regard to acreage limitations.* (a) The authority of the Secretary to approve operating, drilling, or development contracts without regard to acreage limitations ordinarily will be exercised only to permit operators or pipe-line companies to enter into contracts with a number of lessees sufficient to justify operations on a large scale for the discovery, development, production, or transportation of oil or gas and to finance the same.

(b) A contract submitted for approval under this provision should be filed with the appropriate land office manager, Bureau of Land Management, together with enough copies to permit retention of 5 copies by the Department after approval. It should be accompanied by a statement showing all the interests held by the contractor in the area or field and the proposed or agreed plan of operation or development of the field. All the contracts held by the same contractor in the area or field should be submitted for approval at the same time, and full disclosure of the project made. Complete details must be furnished in order that the Secretary may have facts upon which to make a definite determination in accordance with the provisions of the act, and prescribe the conditions on which approval of the contracts is made.

§ 192.24 *Combinations for joint operation of refinery, or for transportation of oil.* Upon obtaining the approval of the Secretary, lessees may combine their interests in leases for the purpose of constructing and carrying on the business

of a refinery, or of establishing and constructing as a common carrier a pipe line or lines of railroads to be operated and used by them jointly in the transportation of oil from their several wells or from the wells of other lessees, or to increase the acreage which may be acquired or held under the provisions of section 17 of the act relating to competitive leases. An application under this section, together with enough copies to permit retention of 5 copies by the Department after approval should be filed with the Director, Bureau of Land Management. The application must show a reasonable need for the combination and that it will not result in any concentration of control over the production or sale of oil and gas which would be inconsistent with the anti-monopoly provisions of the law.²

§ 192.25 *Subsurface storage of oil or gas.* (a) In order to avoid waste or to promote conservation of natural resources, the Secretary of the Interior, upon application by the interested parties, may authorize the subsurface storage of oil or gas, whether or not produced from federally owned lands, in lands leased or subject to lease under the act. Such authorization will provide for the payment of such storage fee or rental on the stored oil or gas as may be determined adequate in each case, or, in lieu thereof, for a royalty other than that prescribed in the lease when such stored oil or gas is produced in conjunction with oil or gas not previously produced. Any lease used for the storage of oil or gas shall be extended for the period of such storage and so long thereafter as oil or gas not previously produced is produced in paying quantities.

(b) Applications for subsurface storage shall be filed in triplicate with the oil and gas supervisor and shall disclose the ownership of the lands involved, the parties in interest, the storage fee, rental, or royalty offered to be paid for such storage and all essential information showing the necessity for such project. Enough copies of the final agreement signed by the parties in interest shall be submitted for the approval of the Secretary to permit retention of 5 copies by the Department after approval.

ISSUANCE OF LEASES

§ 192.40 *Classes and term.* All lands subject to disposition under the act which are known or believed to contain oil or gas may be leased by the Secretary of the Interior. When within the known geologic structure of a producing oil or gas field, such land may be leased only by competitive bidding and in units of not exceeding 640 acres to the highest responsible qualified bidder at a royalty of not less than 12½ per cent. Leases for not to exceed 2,560 acres, except where the rule of approximation applies, within a six-mile square, may be issued for all other land subject to the act to the first qualified offeror at a royalty of 12½ per cent. All leases, except those

issued as renewals of 20-year leases, will be issued for a primary term of five years and so long thereafter as oil or gas is produced in paying quantities.

§ 192.40a *Dating of competitive and noncompetitive oil and gas leases.* All competitive and noncompetitive oil and gas leases, excepting renewal leases, will be dated as of the first day of the month following the date the leases are signed on behalf of the lessor except that where prior written request is made a lease may be dated the first of the month within which it is so signed.

§ 192.41 *Leases for lands wholly or partly within unit areas.* (a) Before issuance of an oil and gas lease for lands within an approved unit agreement, the lease applicant or offeror or successful bidder will be required to file evidence that he has entered into an agreement with the unit operator for the development and operation of the lands in his lease under and pursuant to the terms and provisions of the approved unit agreement, or a statement giving satisfactory reasons for the failure to enter into such agreement. If such statement is acceptable, he will be permitted to operate independently but will be required to conform to the terms and provisions of the agreement with respect to such operations.

(b) In case an application or offer for a noncompetitive lease embracing lands partly within and partly without the exterior boundaries of a unitized area is found acceptable, separate leases will be issued, one embracing the lands within the unit area, and one the lands outside of such area.

NONCOMPETITIVE LEASES

§ 192.42 *Offer to lease, and issuance of lease.* (a) To obtain a non-competitive lease an offer to accept such lease must be made on Form 4-1158, "Offer to lease and lease for oil and gas," or on unofficial copies of that form in current use: *Provided*, That the copies are exact reproductions of one page of both sides of the official approved one page form and are without additions, omissions or other changes or advertising. Form 4-1158 or a valid reproduction of the official form will also constitute the lease when signed by the Manager of the Land Office.

(b) Five copies of Form 4-1158, or valid reproduction thereof, for each offer to lease shall be filed in the proper land office, or for land or deposits in States for which there are no land offices, with the Director of the Bureau of Land Management, Washington 25, D. C.³ If less than five copies are filed, the offer will not be rejected, if not otherwise subject to rejection, until 30 days from filing have elapsed and if during that period the remaining required copies are filed, the offeror's priority will date from the date of the first filing. If the additional copies are not filed within the 30-day

³ Offers for lands or mineral deposits in the following States should be filed at the land office named: North or South Dakota, land office at Billings, Montana; Nebraska or Kansas, at Cheyenne, Wyoming; Oklahoma, at Santa Fe, New Mexico.

² Rights-of-way for oil and gas pipe lines may be granted as provided for in §§ 244.60 to 244.66 of this chapter.

period, the offer will be rejected and returned and will afford no priority to the offeror. Should the additional copies be filed after the 30-day period but before the offer has been rejected, the offeror will have a priority as of the later filing date. The offer must be filed on a form in effect at the date of filing. For the purpose of this part an offer will be considered filed when it is received in the proper office during business hours.

(c) The offeror shall mark one of the copies first filed at the top with the word "original." If that is not done, the manager will so mark one copy. If there is any variation in the land descriptions among the five copies, the copy marked "original" shall govern as to the lands covered by the lease.

(d) Each offer must be filled in on a typewriter or printed plainly in ink and signed in ink by the offeror or the offeror's duly authorized attorney in fact or agent. An offer may be made by a legal guardian or trustee in his name for the benefit of a non-alien minor or minors but an offer may not be filed by a minor. Each offer must describe the lands by legal subdivision, section, township, and range, if the lands are surveyed, and if not surveyed, by a metes and bounds description connected with a corner of the public land surveys by course and distance and must cover only lands entirely within a six-mile square. Each offer must be for an area of not more than 2,560 acres except where the rule of approximation applies, and may not be for less than 640 acres except in any one of the following instances:

(1) Where the offer is accompanied by a showing that the lands are in an approved unit or cooperative plan of operation or such a plan which has been approved as to form by the Director of the Geological Survey.

(2) Where the land is surrounded by lands not available for leasing under the act, except that where the tract was isolated as the result of a partial relinquishment of a lease, no lease offer will be received for the relinquished land other than one filed under the conditions prescribed in subparagraph (1) of this paragraph for a period of 60 days from and after the date of filing of the partial relinquishment.

(e) Each offer, when first filed, shall be accompanied by:

(1) A filing fee of \$10 which will be retained as a service charge, except as provided in paragraph (g) of this section, even though the offer should be rejected or withdrawn in whole or in part.

(2) Full payment of the first year's rental based on the total acreage if known, and if not known, on the basis of 40 acres for each smallest legal subdivision.

(3) Except in a case where an officer of a corporation signs an offer on behalf of the corporation (as to which see paragraph (f) (2) of this section), evidence of the authority of the attorney in fact or agent to sign the offer and lease, if the offer is signed by such attorney or agent on behalf of the offeror; and in addition, if such offeror is an individual, a statement over the offeror's signature

setting forth the offeror's citizenship and whether the offeror's direct and indirect interests in oil and gas leases, applications, and offers therefor, exceeds 46,080 chargeable acres in the same State, or exceeds 100,000 acres in the Territory of Alaska.

(4) If the offer is signed by an attorney in fact or agent, or if any attorney in fact or agent has been authorized to act on behalf of the offeror with respect to the offer or lease, separate statements over the signatures of the attorney in fact or agent and the offeror stating whether or not there is any agreement or understanding between them, or with any other person, either verbal or written by which the attorney in fact or agent or such other person has received, or is to receive, any interest in the lease when issued, including royalty interest or interest in an operating agreement under the lease giving full details of the agreement or understanding, if it is a verbal one; the statement must be accompanied by a copy of any such written agreement or understanding; and if such an agreement or understanding exists, the statement of the attorney in fact or agent should set forth the citizenship of the attorney in fact or the agent or other person and whether his direct and indirect interests in oil and gas leases, applications, and offers therefor exceeds 46,080 chargeable acres in the same State, or exceeds 100,000 acres in the Territory of Alaska. This requirement does not apply in cases in which the attorney in fact or agent is a member of an unincorporated association (including a partnership) or is an officer of a corporation and has an interest in the offer or the lease to be issued solely by reason of the fact that he is a member of the association or a stockholder in the corporation.

(5) If the offer is made by a guardian or trustee, a certified copy of the court order authorizing him to act as such and to fulfill in behalf of the minor or minors all obligations of the lease or arising thereunder; his statements as to the citizenship and holdings of each of the minors; and a similar statement as to his own citizenship and holdings under the leasing act, including his holdings for the benefit of other minors.

(6) If the offer is made by an association (including a partnership), it must be accompanied by a certified copy of the articles of association and the same showing as to the citizenship and holdings of its members as required of an individual.

(f) If the offeror is a corporation the offer must be accompanied by a statement showing (1) the State in which it is incorporated, (2) that it is authorized to hold oil and gas leases and that the officer executing the lease is authorized to act on behalf of the corporation in such matters, (3) the percentage of voting stock and of all the stock owned by aliens for those having addresses outside of the United States, and (4) the names and addresses of the stockholders holding 20 percent or more of the stock of the corporation. When the stock owned by aliens is over 10 percent, additional information may be required by

the Bureau before the lease is issued or production is obtained. A separate showing of citizenship and holdings of stockholders owning or controlling 20 percent or more of the stock of any class must also be furnished. Where such material has previously been filed a reference by serial number to the record in which it has been filed, together with a statement as to any amendments will be accepted.

(g) (1) Except as provided in subparagraph (2) of this paragraph, an offer will be rejected and returned to the offeror and will afford the applicant no priority if:

(i) The land description is insufficient to identify the lands or the lands are not entirely within a 6-mile square.

(ii) The total acreage exceeds 2,560 acres, except where the rule of approximation applies or is less than 640 acres or the equivalent of a section and is not within the exceptions in paragraph (d) of this section.

(iii) The full filing fee and the first year's rental do not accompany the offer, the rental payment to be for the total acreage if known, and if not known, for the total acreage computed on the basis of 40 acres for each smallest legal subdivision.

(iv) The offer is signed by an agent in behalf of the offeror and the offer is not accompanied by a statement over the offeror's own signature with respect to holdings and citizenship and by the statements and evidence required by paragraph (e) (4) of this section.

(v) The offer is signed by a guardian or trustee in behalf of a minor and is not accompanied by the evidence required by paragraph (e) (5) of this section.

(vi) Less than five copies of the offer are filed and the copies lacking are not received in the land office before the expiration of 30 days from the date of receipt of the copies first filed.

(vii) There is noncompliance with item 5 (a) and (e) of the Special Instructions. The offeror will be given an opportunity to file a new offer within 30 days from service of the rejection, and the fee and rental payments on the old offer will be applied to the new offer if the new offer shows the serial and receipt numbers of the old offer. The advance rental will be returned unless within the 30-day period another offer is filed.

(2) An offer to lease containing any of the following deficiencies will be approved by the signing officer provided all other requirements are met:

(i) An offer deficient in the first year's rental by not more than 10 percent. The additional rental must be paid within 30 days from notice under penalty of cancellation of the lease.

(ii) An offer covering not more than 10 percent over the maximum allowable acreage of 2,560 acres. The lease will be approved for 2,560 acres in the discretion of the signing officer or, so much over that amount as may be included under the rule of approximation.

(iii) An offer completed in pencil or script.

(iv) An offer on a lease form not currently in use.

(v) An offer or a form not correctly reproduced provided it contains the statement that the offeror agrees to be bound by the terms and conditions of the lease form in effect at the date of filing.

(h) An offer may not be withdrawn, either in whole or in part, unless the withdrawal is received by the land office before the lease, an amendment to the lease, Form 4-1163, or a separate lease, whichever covers the land described in the withdrawal, has been signed on behalf of the United States.

(i) The United States will indicate its acceptance of the lease offer, in whole or in part, and the issuance of the lease by the signature of the appropriate officer thereof in the space provided. An executed copy of the lease will be mailed to the offeror at the address of record.

(j) If any of the land described in item 2 of the offer is open to oil and gas filing when the offer is filed but is omitted from the lease for any reason and thereafter becomes available for leasing to the offeror, the original lease will be amended to include the omitted land unless before the issuance of the amendment to Form 4-1158 the land office receives a withdrawal of the offer as to such land or an election to receive a separate lease in lieu of an amendment. Such election shall consist of a signed statement by the offeror asking for a separate lease accompanied by a new offer on Form 4-1158 describing the remaining lands in his original offer, executed pursuant to this section. The new offer will have the same priority as the old offer. It need not be accompanied by the filing fee. The rental payment held on the original offer will be applied to the new offer. The rental and the lease term for the land added by such an amendment shall be the same as if the land had been included in the original lease when it was issued. If a separate lease is issued, it will be dated in accordance with § 192.40a.

(k) A transfer of the whole interest in all or any part of the offer may be approved as an incident to the transfer, by assignment or otherwise, of the whole interest in all or any part of the lease. A transfer of an undivided fractional interest in the whole offer may be approved as an incident to the transfer of an undivided fractional interest in the whole lease. An application for approval of a transfer of an offer must include a statement that the transferee agrees to be bound by the offer to the extent that it is transferred and must be signed by the transferee. In other instances transfers of an offer will not be approved prior to the issuance of a lease for the lands or deposits covered by the said transfers.

(l) If an offeror dies before the lease is issued, the lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed, and if probate has been completed, or is not required, to the heirs or devisees, provided there is filed in all cases an offer to lease in compliance with the requirements of this section which will be effective as of the effective date of the original application or lease offer filed by the deceased. If there are any

minor heirs or devisees, such offer can only be made by their legal guardian or trustee in his name. Each such offer must be accompanied by the following information:

(1) Where probate of the estate has not been completed:

(i) Evidence that the person who as executor or administrator submits the offer, and bond form if a bond is required, has authority to act in that capacity and to sign the offer and bond forms.

(ii) A statement over the signature of each heir or devisee, similar to that required of an offeror under paragraph (e) (4) of this section concerning citizenship and holdings.

(iii) Evidence that the heirs or devisees are the heirs or devisees of the deceased offeror and are the only heirs or devisees of the deceased.

(2) Where the executor or administrator has been discharged or no probate proceedings are required:

(i) A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the offeror and the provisions of the law of the deceased's last domicile showing that no probate is required.

(ii) A statement over the signature of each of the heirs or devisees with reference to holdings and citizenship, similar to that required under paragraph (e) (4) of this section, except that if the heir or devisee is a minor, the statement must be over the signature of the guardian or trustee.

(m) No lease shall be issued before final action has been taken on (1) any prior offer to lease the land, (2) any subsequent offer to lease the land that is based upon an alleged preferential right, and (3) any petition for the renewal or reinstatement of an existing or former lease on the land. If a lease is issued before final action has been taken on such an offer or petition, it shall be canceled, after due notice to the lessee, if the offeror or petitioner is found to be qualified and entitled to receive a lease on the land

[Circ. 1894, 19 F. R. 9275, Dec. 29, 1954]

§ 192.43 *Availability of lands to further lease offers where noncompetitive lease is cancelled, relinquished or terminated.* (a) Where the lands embraced

in a relinquished or cancelled noncompetitive lease are not on the known geologic structure of a producing oil and gas field, and are not withdrawn from leasing, such lands become available for, and subject to, filings of new lease offers immediately upon the notation of the cancellation or relinquishment on the tract book, or, for acquired lands, on the official records relating thereto, of the appropriate land office. See § 192.120 (f) and (g) for the availability for new filings of lands in a lease for which an application for extension has or has not been timely filed; also, see § 192.161 (a) for the availability for new filings of lands in a lease subject to the automatic termination provisions of the act of July 29, 1954 (68 Stat. 583; 30 U. S. C. 188), for lessee's failure timely to pay the lease rental.

(b) Offers to lease which are received in the same mail or over the counter at the same time, will be considered as having been filed simultaneously, and priority to the extent of the conflicts between them will be determined by a public drawing in accordance with the provisions of § 295.8 of this chapter.

(Section 192.43 amended by Circular No. 1904, 20 F. R., March 24, 1955)

§ 192.44 *Pending applications.* Applications filed prior to the effective date of the regulations in this part will be processed in accordance with the regulations in effect immediately prior to such date and leases will continue to be issued in such cases on Form 4-213, except:

(a) An applicant may, without losing his priority, file Form 4-1158 "Offer and Lease Form" for the land described in his application, pursuant to § 192.42, but without paying the required filing fee, and

(b) From the date of issuance of the regulations in this part until their effective date, Form 4-1158, or unofficial copies thereof, which are exact reproductions on one page of both sides of the official approved one page form, if available, may be filed instead of filing new applications under the prior regulations.

COMPETITIVE LEASES

§ 192.50 *Designation and offer of lands for lease by competitive bidding.* The lands and deposits subject to disposition under the act which are within the known geologic structure of a producing oil or gas field will be divided into leasing blocks or tracts in units of not exceeding 640 acres each, which shall be as nearly compact in form as possible, and offered for lease at a royalty and rental to be specified in the notice of sale, to the qualified person who offers the highest bonus by competitive bidding either at public auction, or by sealed bids as provided in the notice of sale.

§ 192.51 *Notice of lease offer.* Notice of the offer of lands for lease will be by publication once a week for five consecutive weeks, or for such other period as may be deemed advisable, in a newspaper of general circulation in the county in which the lands or deposits are situated, or in such other publications as the authorized officer, Bureau of Land Management may authorize. The notice will be published at the expense of the Government.

§ 192.52 *Qualifications of successful bidder.* The successful bidder at a sale by public auction must on the day of the sale, deposit with the manager of the land office or other officer conducting the sale, and each bidder, if the sale is by sealed bids, must submit with his bid the following: Certified check on a solvent bank, money order, or cash, for one-fifth of the amount bid by him and a statement over the bidder's own signature with respect to citizenship and interests held, similar to that required of an offeror under § 192.42 (e) (3). If the successful bidder is a corporation, it must also file a statement similar to that required by § 192.42 (f).

§ 192.53 *Award of lease.* Following receipt of the report of the auction, or the opening of the sealed bids, the authorized officer, subject to his right to reject any or all bids, will award the lease to the successful bidder. Notice of his action will be forthwith transmitted to the interested parties through the local office. If the lease be awarded, three copies of the lease will be sent to the successful bidder and he will be required within 30 days from receipt thereof to execute them, pay the balance of his bonus bid, the first year's rental, and file a bond as required in § 192.100. If any bid be rejected, the deposit will be returned. If a bidder, after being awarded a lease, fails to execute it or otherwise comply with the applicable regulations, his deposit will be forfeited and disposed of as other receipts under this act. If the lease awarded to the successful bidder is executed by an attorney acting in behalf of the bidder, the lease must be accompanied by evidence that the bidder authorized the attorney to execute the lease.

If two or more units are awarded to any bidder, such units, where the acreage does not exceed 640 acres, may be included in a single lease if circumstances warrant.

§ 192.54 *Form of lease.* Competitive leases will be issued on Form 4-213 and the rentals and royalties payable thereunder will be set forth in Schedule "B" affixed thereto and made a part thereof.

EXCHANGE AND RENEWAL LEASES

§ 192.60 *Application to exchange lease for a new lease.* Any lease which issued for a term of 20 years, or any renewal thereof, or which issued in exchange for a 20-year lease prior to August 8, 1946, may be exchanged for a new lease. Such new lease will be issued for a primary term of 5 years and so long thereafter as oil or gas is produced in paying quantities and will contain the rental and royalty rates prescribed in §§ 192.80, 192.81 and 192.82. An application to exchange a lease for a new lease should be filed in triplicate by the lessee with the manager of the appropriate land office and must show full compliance by the applicant with the terms of the lease and applicable regulations.

§ 192.61 *Application for renewal.* (a) Twenty year leases or renewals thereof may be renewed for successive terms of 10 years at the rental and royalty rates specified for such renewal leases in §§ 192.80, 192.81 and 192.82. An application to renew should be filed in triplicate, in the proper office as prescribed in § 192.42 (b), at least 90 days, but not more than six months, prior to the expiration of its term. Such application should be made by the record title holder or holders of the lease and may be joined in or consented to by the operator of record. The application should show whether all moneys due the United States have been paid and whether operations under the lease have been conducted in accordance with the regulations of the Department.

(b) The applicant or his operator shall furnish in triplicate with the application for renewal, copies of all agreements not theretofore filed providing for overriding royalties or other payments out of production from the lease which will be in existence as of the date of its expiration. When such payments, including overriding royalties, are in excess of 5 per cent of gross production a detailed statement of the income from and costs of operation of the lease for the twelve month period immediately preceding the month in which the application for renewal is filed must also be furnished.

§ 192.62 *Action on application.* If the outstanding obligations in excess of five per cent of gross production payable from production do not constitute a burden on the lease prejudicial to the interests of the United States, they will not be considered a bar to its renewal but any lease that may be issued will be upon the condition, to be incorporated in the lease, that if and when the costs of operations, including the payment of overriding royalties or payments out of production, shall be determined by the authorized officer of the Bureau of Land Management to constitute such a burden such royalties and payments shall be reduced to not more than 5 per cent of the value of the production. If no objection to the renewal of the lease appears, copies of a renewal lease, in triplicate, dated the first day of the month in which the original lease terminated, will be forwarded to the lessee for execution. If upon receipt of the executed lease forms and a satisfactory lease bond, the lease is executed, one copy thereof will be delivered to the lessee.

If a determination is made that overriding royalties and payments out of production in excess of 5 percent of gross production constitute a burden on lease operations to the extent that proper and timely development will be retarded, or continued operation of the lease impaired, or premature abandonment of the wells caused, the lease application will be suspended and the parties in interest will be offered an opportunity to reduce the excessive overriding royalties or other payments out of production to not more than 5 percent of the value of the production. If the holders of outstanding overriding royalty or other interests payable out of production, the operator, and the lessee are unable to enter into a mutually fair and equitable agreement, any of the parties may apply for a hearing at which all interested parties may be heard and written statements presented. Thereupon a final decision will be rendered by the Department outlining the conditions acceptable to it as a basis for a fair and reasonable adjustment of the excessive overriding royalties and other payments out of production, and an opportunity will be afforded within a fixed period of time to submit proof that such adjustment has been effected. Upon failure to submit such proof within the time so fixed, the application for renewal will be denied.

§ 192.63 *Form of lease.* Renewal and exchange leases will be issued on Form 4-213. The rentals and royalties payable thereunder will be set out on Schedule C or D as may be appropriate, which schedule is attached thereto and made a part thereof.

LEASE ON PATENTED OR ENTERED LAND

§ 192.70 *Preference right of patentee or entryman to a lease.* (a) An entryman or patentee who made entry prior to February 25, 1920, or an assignee of such entryman or a vendee of such patentee if the assignment or conveyance was made prior to January 1, 1918, for lands not withdrawn or classified or known to be valuable for oil and gas at date of entry shall be entitled, if the entry or patent is impressed with a reservation of the oil or gas, to a preference right to a lease for the land. A settler whose settlement was made prior to February 25, 1920, on land in the same status but which has since been withdrawn, classified, or is known to contain oil or gas, also has such a preference right.

(b) Any offeror for a lease to lands owned, entered or settled upon as stated above must notify the person entitled to a preference right of the filing of the offer and of the latter's preference right for 30 days after notice to apply for a lease. If the party entitled to a preference right files a proper offer within the 30-day period, he will be awarded a lease; but if he fails to do so, his rights will be considered to have terminated.

§ 192.71 *Lands in entries or claims not impressed with a reservation of oil and gas.* (a) Where an offer is filed to lease lands noncompetitively in an entry or settlement claim not impressed with an oil or gas reservation, the offer will be rejected unless it is found that the land is prospectively valuable for oil or gas. An offeror for a lease for land already embraced in a nonmineral entry without a reservation of the mineral, and likewise a nonmineral entryman or settler who is contending that the land is nonmineral in character should submit with their respective offer and application, showings of as complete and accurate geologic data as may be procurable, preferably the reports and opinions of qualified experts.

(b) Should the land be found to be prospectively valuable for oil or gas, the entryman or settler will be required to consent to a reservation of the oil or gas to the United States or to contest the mineral finding. If he does neither, the entry will be canceled or his settlement rights denied. If he consents, or contests the finding and is unsuccessful, a lease will be granted to the offeror, unless the entryman or settler has a preference right, but if the entryman or settler prevails in a contest, the offer will be rejected.

§ 192.72 *Showing required of oil and gas offerors for unsurveyed lands.* Every offeror for oil and gas lease for unsurveyed lands, must state in his offer that there are no settlers upon the land, or if

there be settlers, give the name and post office address of each and a description of the lands claimed, by metes and bounds and approximate legal subdivisions.

RENTALS AND ROYALTIES

§ 192.80 Rentals. Rentals shall be payable in advance at the following rates:

(a) On noncompetitive leases issued under section 17 of the act, wholly outside of the known geologic structure of a producing oil or gas field:

(1) For the first lease year, 50 cents per acre or fraction thereof, except as to Alaska where the rate shall be 25 cents per acre or fraction thereof.

(2) For the second and third lease years, no rental.

(3) For the fourth and fifth years, 25 cents per acre or fraction thereof.

(4) For the sixth and each succeeding year, 50 cents per acre or fraction thereof, except as to Alaska where the rate shall be 25 cents per acre or fraction thereof.

(b) On leases wholly or partly within the known geologic structure of a producing oil or gas field:

(1) If issued noncompetitively under section 17 of the act, and not committed to a cooperative or unit plan that contains a general provision for allocation of production, beginning with the first lease year after the expiration of thirty days notice to the lessee that all or part of the land is included in such a structure and for each year thereafter, prior to a discovery of oil or gas on the leased lands, rental of \$1.00 per acre or fraction thereof.

(2) If issued noncompetitively under section 17 of the act, and committed to an approved cooperative or unit plan which includes a well capable of producing oil or gas and contains a general provision for allocation of production, the rental prescribed for the respective lease years in paragraph (a) of this section, shall apply to the acreage not within a participating area, except that the rental for the second and third lease years for such acreage shall be 25 cents per acre or fraction thereof.

(3) If issued competitively, an annual rental, prior to a discovery on the leased lands, of \$1.00 per acre or fraction thereof, unless a different rate of rental is prescribed in the lease.

(c) On leases issued in any other way, an annual rental of \$1.00 per acre or fraction thereof.

§ 192.81 Minimum royalty. On leases issued on or after August 8, 1946, and on those issued prior thereto if the lessee files an election under section 15 of the act of August 8, 1946, a minimum royalty of \$1 per acre in lieu of rental, shall be payable at the expiration of each lease year after a discovery has been made on the leased lands, commencing with the lease year, beginning on or after the date of such discovery, except that on unitized leases the minimum royalty shall be payable only on the participating acreage. If the actual royalty paid

during any year aggregates less than \$1 per acre the lessee must pay the difference at the expiration of the lease year.

§ 192.82 Royalty on production. (a) On and after August 8, 1946, the following royalty rates shall be paid on the production removed or sold from leases:

(1) 12½ percent royalty on noncompetitive leases issued under section 17 of the act: *Provided, however,* That any holder of a lease for lands in Alaska who shall drill and make the first discovery of oil or gas in commercial quantities in any geologic structure shall pay a royalty on all production under the lease of 5 percent for 10 years following the date of such discovery and thereafter the royalty rate shall be 12½ percent. If such lease is committed to an approved unit or cooperative plan under which such a discovery is made, the 5 percent rate herein provided shall, for the purpose of computing royalty due the United States, inure to the benefit of all the land to which an allocation is made under such plan.

(2) Such rates as are prescribed in the notice of sale in the case of all leases thereafter issued by competitive bidding.

(3) 12½ percent on all leases theretofore issued, except competitive leases, and on exchange and renewal leases thereafter issued, as to production from

(i) Land determined by the Director, Geological Survey, not to be within the productive limits of any oil or gas deposit on August 8, 1946.

(ii) An oil or gas deposit which was discovered after May 27, 1941, by a well or wells drilled within the boundaries of the lease and which is determined by the Director, Geological Survey, to be a new deposit.

(iii) Or allocated to a lease pursuant to an approved unit or cooperative agreement from an oil or gas deposit which was discovered on unitized land after May 27, 1941, and determined by the Director, Geological Survey, to be a new deposit, but only if at the time of discovery the lease or, in the case of an exchange lease, the lease for which it was exchanged was committed to the agreement or was included in a duly executed and filed application for approval of the agreement.

(4) From lands within exchange and renewal leases not subject to subparagraph (3) of this paragraph the rate of royalty shall be identical to that prescribed in the prior lease, except that for a lease issued in exchange for or as a renewal of a lease carrying a flat royalty rate of 5 percent to the United States the royalty shall be as follows:

(i) When the average production of oil for the calendar month in barrels per well per day is:

Not over 110 the royalty shall be 12½ %.

Over 110 but not over 130 the royalty shall be 18 % of all production.

Over 130 but not over 150 the royalty shall be 19 % of all production.

Over 150 but not over 200 the royalty shall be 20 % of all production.

Over 200 but not over 250 the royalty shall be 21 % of all production.

Over 250 but not over 300 the royalty shall be 22 % of all production.

Over 300 but not over 350 the royalty shall be 23 % of all production.

Over 350 but not over 400 the royalty shall be 24 % of all production.

Over 400 the royalty shall be 25 % of all production.

(ii) On gas, including inflammable gas, helium, carbon dioxide, and all other natural gases and mixtures thereof, and on natural or casinghead gasoline and other liquid products obtained from gas; when the average production of gas per well per day for the calendar month does not exceed 5,000,000 cubic feet, 12½ percent; and when the production of gas exceeds 5,000,000 cubic feet, 16⅔ percent of the amount or value of the gas and liquid products produced.

(5) In the case of competitive leases, and other leases theretofore issued, insofar as subparagraphs (3) and (4) of this paragraph are inapplicable, the rates specified in the lease.

(b) The average production per well per day for oil and for gas shall be determined pursuant to 30 CFR Part 221, "Oil and Gas Operating Regulations."

(c) In determining the amount or value of gas and liquid products produced, the amount or value shall be net after an allowance for the cost of manufacture. The allowance for cost of manufacture may exceed two-thirds of the amount or value of any product only on approval by the Secretary of the Interior.

(d) The Secretary of the Interior may establish reasonable values for purposes of computing royalty on any or all oil, gas, natural gasoline, and other liquid products obtained from gas, due consideration being given to the highest price paid for a part or for a majority of production of like quality in the same field, to the price received by the lessee, to posted prices and to other relevant matters. In appropriate cases this will be done after notice to the parties and opportunity to be heard.

§ 192.83 Limitation of overriding royalties. Any agreement to create overriding royalties or payments out of the production of any lease which, when added to overriding royalties or payments out of production previously created and to the royalty payable to the United States, aggregate in excess of 17½ percent shall be deemed a violation of the terms of the lease unless such agreement expressly provides that the obligation to pay such excess overriding royalty or payments out of production shall be suspended when the average production per well per day averaged on the monthly basis is (a) as to oil, 15 barrels or less and (b) as to gas, 500,000 cubic feet or less. The limitations in this section will apply separately to any zone or portion of a lease segregated for computing Government royalty.

BONDS

§ 192.100 Amount of bonds required of lessee. (a) The successful bidder for

a competitive lease prior to the issuance of the lease must furnish a corporate surety bond in the sum of at least double the amount of the \$1 per acre annual rental but in no case less than \$1,000 nor more than \$5,000, conditioned on compliance with all the terms of the lease, and such a bond must also be filed when all or any part of the land in a lease issued non-competitively is included within the limits of a known geologic structure of a producing oil or gas field.

(b) Until a general lease bond is filed a noncompetitive lessee will be required to furnish and maintain a bond in the penal sum of not less than \$1,000 in those cases in which a bond is required by law for the protection of the owners of surface rights.

(c) All leases shall provide that where a \$5,000 bond is not already being maintained a general lease bond in the penal sum of \$5,000 conditioned upon compliance with all lease terms covering the entire leasehold, shall be furnished by the lessee prior to the beginning of drilling operations. An operator or, if there is more than one operator covering different portions of the lease, each operator may furnish a \$5,000 general lease bond in his own name as principal on the bond in lieu of the lessee. Where there are one or more operator's bonds affecting a single lease, each such bond must be conditioned upon compliance with all lease terms for the entire leasehold. Where a bond is furnished by an operator, suit may be brought thereon without joining the lessee if he is not a party to the bond. An operator's bond will not be accepted unless the operator holds an operating agreement which has been approved by the Department or has pending an operating agreement in proper condition for approval. The mere designation as operator will not suffice.

(d) Bonds shall be either corporate surety bonds or personal bonds except that bonds with individual sureties as provided in § 191.13 of this chapter may be furnished for the protection of the entryman or owner of surface rights. Personal bonds must be accompanied by a deposit of negotiable Federal securities in a sum equal at their par value to the amount of the bond and by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the conditions of the lease bond.

(e) In lieu of bonds required under any of the preceding paragraphs the holder of leases or of operating agreements approved by the Department or holder of operating rights by virtue of being designated operator or agent by the lessees pending departmental approval of operating agreements, may furnish a bond the amount of which must be \$150,000 for full nationwide coverage under both the Mineral Leasing Act and the Mineral Leasing Act for Acquired Lands of 1947 (61 Stat. 1913; 30 U. S. C. 351-359), or at the rate of \$25,000 for each unit of coverage. A unit of coverage shall be all the lands in any one State or Territory held by the principal under either the Mineral Leasing Act or

the Mineral Leasing Act for Acquired Lands. Coverage under both acts in one State or Territory constitutes two units. In lieu of a surety bond a personal bond in a like amount may be given by the obligor with the deposit as security therefor of negotiable bonds of the United States of a par value equal to the amount specified in the bond.

[Circ. 1894, 19 F. R. 9277, Dec. 29, 1954]

§ 192.101 *Form of bonds.* Bonds furnished by lessees will be on Form 4-208g; those furnished by operators on Form 4-238; bonds furnished in lieu of other bonds, pursuant to § 192.100 (e), will be on Form 4-1167 for surety bonds or on Form 4-1168 for personal bonds.

CONTINUATION OR EXTENSION OF LEASE⁴

§ 192.120 *Single extension of a non-competitive lease; segregation of leased lands; notation of records.*

(a) Under the conditions set out in the following paragraphs of this section, the record title holder of any noncompetitive lease maintained in accordance with the statutory requirements and the regulations in this part shall be entitled to a single extension of the lease at the expiration of the initial five-year term unless then otherwise provided by law. An application for such extension may be filed by the record title holder of the lease, by an assignee whose assignment has been filed for approval, or by an operator whose operating agreement has been filed for approval.

(b) The application for extension must be filed, within ninety days before the expiration date of the lease, on Form 4-1238, "Application for Extension of Oil and Gas Lease,"⁵ or unofficial copies of that form in current use and should be accompanied by the payment of the sixth year's rental, unless previously paid: *Provided*, That the unofficial copies are exact reproductions on one sheet of both sides of the official approved one-page form, and are without additions, omissions, or other changes or advertising. Form 4-1238 or a valid reproduction of the official form, will also constitute approval of the extension when signed by an authorized officer.

(c) If during the 90 day period prior to the expiration date of the lease, the record title holder, assignee or operator files an application or request for an extension not on the prescribed form or unofficial copies thereof, or fails to file the prescribed number of copies, or pay the sixth year's rental, a notice will be issued allowing him 30 days to do so. The application will be rejected if such filing or payment is not made within the time allowed.

⁴ For extension of lease (a) because of suspension of operations and production, see § 191.26 of this chapter; (b) by payment of compensatory royalty, see § 192.8; (c) committed to communitization or drilling agreement, see § 192.22; (d) used for subsurface storage, see § 192.25; (e) segregated by assignment, see § 192.144.

⁵ Filed with the Federal Register Division as part of the original document.

(d) Where, upon the expiration of the initial 5-year lease term, the leased lands or any part thereof, have been withdrawn from leasing, the lease will not be extended as to such lands, except that, a withdrawal shall not affect the right to an extension if drilling operations were actually commenced on the withdrawn lands prior to the effective date of the withdrawal and such operations were being diligently prosecuted on the expiration date of the lease, or if notice of the withdrawal has not been sent by registered mail to each lessee to be affected thereby, at least 90 days prior to the termination date of the lease.

(e) Upon compliance with, and in accordance with, the provisions of this section, the lease will be extended, subject to the rules and regulations in force at the expiration of the initial term, (1) as to the lands not within the known geologic structure of a producing oil or gas field, for a period of 5 years, and so long thereafter as oil or gas is produced in paying quantities, and (2) as to lands within the known geologic structure of a producing oil or gas field, for a period of 2 years and so long thereafter as oil or gas is produced in paying quantities.

[Circ. 1894, 19 F. R. 9277, Dec. 29, 1954]

(f) The timely filing of an application for extension shall have the effect of segregating the leased lands until the final action taken on the application is noted on the tract book, or, for acquired lands, on the official records relating thereto, of the appropriate land office. Prior to such notation, the lands are not available to the filing of offers to lease. Offers to lease filed prior to such notation will confer no rights in the offeror and will be rejected.

(g) Upon failure of the lessee or the other persons enumerated in paragraph (a) of this section to file an application for extension within the specified period, the lease will expire at the expiration of its primary term without notice to the lessee. The lands will thereupon become subject to new filings of offers to lease.

(Section 192.120 amended to change caption and add new paragraphs (f) and (g), by Circular No. 1904, 20 F.R., March 24, 1955)

§ 192.121 *Continuation of lease on termination of production.* (a) A lease which is in its extended term because of production shall not terminate upon cessation of production if, within 60 days thereafter, reworking or drilling operations on the leasehold are commenced and are thereafter conducted with reasonable diligence during the period of nonproduction.

(b) No lease for lands on which there is a well capable of producing oil or gas in paying quantities shall expire because the lessee fails to produce the same, unless the lessee fails to place the well on a producing status within 60 days after receipt of notice by registered mail from the Regional Oil and Gas Supervisor to

do so: *Provided*, That after such status is established production shall continue on the leased premises unless and until suspension of production is allowed by the Secretary of the Interior under the provisions of the act.

[Circ. 1894, 19 F. R. 9278, Dec. 29, 1954]

§ 192.122 *Extension for terms of cooperative or unit plan.* (a) Any lease issued for a term of 20 years, or any renewal thereof, committed to a cooperative or unit plan approved by the Secretary of the Interior, or any portion of such lease so committed, shall continue in force so long as committed to the plan, beyond the expiration date of its primary term. This provision does not apply to that portion of any such lease which is not included in the cooperative or unit plan unless the lease was so committed prior to August 8, 1946.

(b) Any other lease issued under any section of the act, committed to any such plan that contains a general provision for the allocation of oil or gas, shall continue in effect as to the land committed so long as the lease remains subject to the plan: *Provided*, That production of oil or gas is had in paying quantities under the plan prior to the expiration date of such lease, whether it be in its primary term or its extended term.

(c) Any lease committed after July 29, 1954 to such a plan, which covers lands within and lands outside the area covered by the plan, shall be segregated, as of the effective date of unitization, into separate leases; one covering the lands committed to the plan and the other the lands not so committed. The segregated lease covering the nonunitized portion of the lands, shall continue in force for the term of the parent lease, or for two years from the date of segregation, whichever period is longer, and for so long thereafter as oil or gas is produced in paying quantities.

[Circ. 1894, 19 F. R. 9278, Dec. 29, 1954]

§ 192.123 *Extension of lease eliminated from cooperative or unit plan or communitization or drilling agreement and of lease in effect at termination of such plan or agreement.* Any lease or portion thereof eliminated from any approved or prescribed cooperative or unit plan or from any communitization or drilling agreement authorized by the act, and any lease in effect at the termination of such plan or agreement, unless relinquished, shall continue in effect for the original term of the lease, or for two years after its elimination from the plan or agreement or the termination thereof, whichever is the longer, and so long thereafter as oil or gas is produced in paying quantities.

ASSIGNMENTS OR TRANSFERS

§ 192.140 *Assignments or transfers of leases or interests therein.* Leases may be assigned or subleased as to all or part of the leased acreage and as to either a divided or undivided interest therein to any person or persons qualified to hold a lease. Subject to final approval by the Bureau of Land Management, assignments or subleases shall take effect as of the first day of the lease month following

the date of filing in the proper land office of all the papers required by §§ 192.141 and 192.142. No assignment will be approved if the assignee is not qualified to take and hold a lease or if his bond is insufficient. A minor, except a minor heir or devisee of a lessee, is not qualified to hold a lease and an assignment to a minor will not be approved. An assignment of a separate zone or deposit or of a part of a legal subdivision will not be approved unless the necessity therefor is established by clear and convincing evidence.

§ 192.141 *Requirements for filing of transfers.* (a) (1) Except as to assignments of record title, all instruments of transfer of a lease or of an interest therein, including assignments of working or royalty interests, and operating agreements, and subleases, must be filed for approval within 90 days from the date of final execution and must contain all of the terms and conditions agreed upon by the parties thereto, together with a statement over the transferee's own signature with respect to citizenship and interests held, similar to that required of an offeror under § 192.42 (e) (3), (4) and (f).

(2) To obtain approval of a transfer affecting the record title of an oil and gas lease, a request for such approval must be made, within 90 days from the date of the execution of the assignment by the parties. Form 4-1175, "Assignment affecting Record Title to Oil and Gas Lease", or unofficial copies of that form in current use may be used for such transfers and requests for approval: *Provided*, That the unofficial copies are exact reproductions on one sheet of both sides of the official approved one-page form, and are without additions, omissions, or other changes, except that the copies shall include the following statement above the signature of the assignee: "This form is submitted in lieu of official Form 4-1175 and contains all of the provisions thereof as of the date of filing of this assignment." In addition, the name and address of the printer or other party issuing unofficial reproductions of the official form shall be printed thereon. This form may be used for any assignment which affects a transfer of the record title to all or part of an oil and gas lease, but it is not to be used for any other type of transfer. Form 4-1175, or a valid reproduction of the official form, will also constitute approval of the assignment when signed by the manager of the land office.

(3) An application for approval of any instrument of transfer of a lease or interest therein or a filing of any such instrument under § 192.145 must be accompanied by a fee of \$10, and an application not accompanied by payment of such a fee will not be accepted for filing by the manager. Such fee will not be returned even though the application later be withdrawn or rejected in whole or in part.

(b) Where an attorney in fact, in behalf of the holder of a lease, operating agreement or of a royalty interest in a producing lease, signs an assignment of the agreement, lease, or interest, or

signs the application for approval, there must be furnished evidence of the authority of the attorney to execute the assignment or application, and the statement required by § 192.42 (e) (3).

(c) If a bond is necessary, it must be furnished. Where an assignment does not create separate leases the assignee, if the assignment so provides, may become a joint principal on the bond with the assignor. Any assignment which does not convey the assignor's record title in all of the lands in the lease must also be accompanied by consent of his surety to remain bound under the bond of record for the lease interest retained by said assignor, if the bond, by its terms, does not contain such consent. If a party to the assignment has previously furnished a nation-wide bond on either form, 4-1167 or 4-1168, applicable to the State and the act under which the lease issued, no additional showing is necessary by such party as to the bond requirement. If any overriding royalty or payments out of production are created which are not shown in the instrument or agreement, a statement must be submitted describing them. If payments out of production are reserved, a statement should be submitted stating the details as to the amount, method of payment, and other pertinent terms. Assignments of record title interests must be filed in triplicate. A single copy of any additional information specified in Instructions, Form 4-1175,⁵ relating to citizenship and qualifications of corporations, will be sufficient. A single executed copy of all other instruments of transfer, or of an operating agreement is sufficient.

(d) In order for the heirs or devisees of a deceased holder of a lease, an operating agreement, or a royalty interest in a producing lease, to be recognized by the Department as the holder of the lease, agreement, or interest, there must be furnished the appropriate showing required under § 192.42 (1).

(e) The assignor or sublessor and his surety will continue to be responsible for the performance of any obligation under the lease until the assignment or sublease is approved. If the assignment or transfer is not approved, their obligations to the United States shall continue as though no such assignment or transfer had been filed for approval. After approval the assignee or sublessee and his surety will be responsible for the performance of all lease obligations notwithstanding any terms in the assignment or sublease to the contrary.

(f) Unless the lease account is in good standing as to the area covered by the assignment when the assignment and bond are filed, or is placed in good standing before the assignment is reached for action the lease will be cancelled as provided in § 192.161.

§ 192.142 *Separate assignments required for transfer of record titles to leases.* A separate instrument of assignment must be filed for each oil and gas lease when transfers involve record

⁵ Filed with the Federal Register Division as part of the original document.

titles. When transfers to the same person, association, or corporation, involving more than one oil and gas lease are filed at the same time for approval, one request for approval and one showing as to the qualifications of the assignee will be sufficient.

§ 192.143 *Effect of assignment of particular tract.* When an assignment is made of all or part of the record title to a portion of the acreage in a lease, the assigned acreage becomes segregated into a separate and distinct lease. The assignee becomes a lessee of the Government as to the segregated tract and is bound by the terms of the lease as though he had obtained the lease through an application filed in his own name and the assignment after its approval will be the basis of a new record.

§ 192.144 *Extension of leases segregated by assignment.* (a) Any lease segregated by assignment, including the retained portion, shall continue in effect for the primary term of the original lease, or for two years after the date of discovery of oil or gas in paying quantities upon any other segregated portion of the original lease, whichever is the longer period.

(b) Undeveloped parts of leases assigned out of leases which are in their extended term under any provision of the act shall continue in effect for two years, and so long thereafter as oil or gas is produced in paying quantities.

[Circ. 1894, 19 F. R. 9278, Dec. 29, 1954]

§ 192.145 *Royalty interests in oil and gas leases and assignments thereof.*

Royalty interests in oil and gas leases constitute holdings or control of lands and deposits within the meaning of section 27 of the act. In order that the holdings of the assignee may be verified, all assignments of royalty interests must be filed for record purposes but no formal approval will be given. Any such assignment will be deemed to be valid provided it is accompanied by a statement over the assignee's signature that he is a citizen of the United States and that his interests in oil and gas leases do not exceed the acreage limitation as provided in § 192.3 and by the statement as to over-riding royalties required by § 192.83. If any portion of this statement is found to be false the assignment shall be invalid.

(Section 192.145 amended by Circular No. 1907, 20 F.R., May 6, 1955)

TERMINATION OF LEASES

§ 192.160 *Relinquishments of leases or portions thereof.* A lease or any legal subdivision thereof may be surrendered by the record title holder by filing a written relinquishment, in triplicate, in the proper land office. A relinquishment shall take effect on the date it is filed subject to the continued obligation of the lessee and his surety to make payment

of all accrued rentals and royalties and to place all wells on the land to be relinquished in condition for suspension or abandonment in accordance with the regulations and the terms of the lease. A statement must be furnished that all moneys due and payable to workmen employed on the leased premises have been paid.

§ 192.161 *Cancellation and termination of lease.* (a) Any lease issued after July 29, 1954, or any lease which is extended after that date pursuant to § 192.120, on which there is no well capable of producing oil or gas in paying quantities shall automatically terminate by operation of law if the lessee fails to pay the rental on or before the anniversary date of such lease. However, if the time for payment falls upon any day in which the proper office to receive payment is not open, payment received on the next official working day shall be deemed to be timely. The termination of the lease for failure to pay the rental must be noted on the tract book, or, for acquired lands, on the official records relating thereto, of the appropriate land office. Until such notation is made, the lands included in such lease are not subject to, nor available for, leasing. Offers to lease filed prior to such notation will confer no rights in the offeror and will be rejected.

(b) Whenever the lessee fails otherwise to comply with any of the provisions of the act, of the regulations issued thereunder, or of the lease, such lease may be cancelled by the Secretary of the Interior if not known to contain valuable deposits of oil or gas after notice to lessee in accordance with section 31 of the act, if default continues for the period prescribed in that section after service of notice thereof. Any lessee of a lease which issued prior to July 29, 1954, may, at any time prior to the anniversary date of such lease and the accrual of rental, elect to subject his lease to the automatic termination provisions of this section by notifying, in writing, the manager of the appropriate land office to that effect.

(c) Leases known to contain valuable deposits of oil or gas may be cancelled only by judicial proceedings in the manner provided in sections 27 and 31 of the act.

(Section 192.161 amended by Circular No. 1904, 20 F.R., March 24, 1955)

**TITLE 43—PUBLIC LANDS:
INTERIOR**

**Chapter I—Bureau of Land Management,
Department of the Interior**

[Circular 1928]

**PART 201—MINERAL DEPOSITS IN THE
OUTER CONTINENTAL SHELF**

**PAYMENTS OF FILING CHARGES, BONUSES,
RENTALS AND ROYALTIES**

Section 201.5 is amended to read as follows:

§ 201.5 *Payments of filing charges, bonuses, rentals and royalties.* All payments to the United States required by the act or the regulations in this part shall be made to the oil and gas supervisor of the Geological Survey for the region in which the leased area is situated, except that payments of filing charges, bonuses and first year's rental shall be made to the manager of the appropriate field office,¹ Bureau of Land Management, unless otherwise directed by the Secretary. All payments should be made by check, bank draft, or money order payable to the United States Geological Survey, if the payments are made to the Geological Survey, or to the Bureau of Land Management, if the payments are made to that Bureau.

(Sec. 5, 67 Stat. 464; 43 U. S. C. 1334)

DOUGLAS MCKAY,
Secretary of the Interior.

AUGUST 30, 1955.

[F. R. Doc. 55-7178; Filed, Sept. 6, 1955;
8:45 a. m.]

Published in 20 F. R. September 7, 1955

Copies to	Each AA	25	BFS	10	
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All Regional and Field Solicitors			1 ea.		

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter A—Alaska

[Circular No. 1929]

PART 63—GRAZING

ESTABLISHMENT OF GRAZING DISTRICTS AND ISSUANCE OF GRAZING LEASES

This part is revised, effective 60 days from date of approval by the Secretary of the Interior, to read as follows:

- Sec. 63.1 Statutory authority.
- 63.2 Policy.
- 63.3 Definitions.
- 63.4 Grazing districts; leases on acreage basis; exceptions.
- 63.5 Lands subject to lease.
- 63.6 Qualifications of applicants.
- 63.7 No right acquired by applicant prior to lease.
- 63.8 Classes of applicants; preference rights.
- 63.9 Application for lease; schedule of operations.
- 63.10 Maximum number of stock.
- 63.11 Annual rental; amount; adjustment; waiver.
- 63.12 Reduction in leased area, when area is excessive.
- 63.13 Free grazing permits; leases to natives.
- 63.14 Protests.
- 63.15 Issuance of lease.
- 63.16 Report of grazing operations; assignments; renewals.
- 63.17 Stock driveways; crossing permits; quarantine regulations.
- 63.18 Rights reserved; public land laws applicable.
- 63.19 Termination of lease; cancellation.
- 63.20 Permits for construction and maintenance of improvements; fences.
- 63.21 Removal of improvements and other property.
- 63.22 Appeals.

AUTHORITY: §§ 63.1 to 63.22 issued under sec. 15, 44 Stat. 1455; 48 U. S. C. 471n.

§ 63.1 *Statutory authority.* The act of March 4, 1927 (44 Stat. 1452; 48 U. S. C. 471, 471a-471o) authorizes the Secretary of the Interior to establish grazing districts upon any public lands in Alaska, surveyed or unsurveyed, outside of the Aleutian Islands Reservation, outside of national forests and other

reservations administered by the Secretary of Agriculture and outside of national parks and monuments, and to lease such lands for the grazing of livestock thereon. Section 7 of the act provides that all leases shall be made for a term of 20 years, except where the Secretary of the Interior determines that the land may be required for other than grazing purposes within the period of 10 years, or where the applicant desires a shorter term, and in such cases leases may be made for a shorter period.¹

§ 63.2 *Policy.* The beneficial utilization of the public lands in Alaska for the purpose of livestock grazing shall be conducted in such manner as may be considered necessary and consistent with the purposes of the act but shall be subordinated to the development of their mineral resources, to their use for agriculture, to the protection, development and utilization of their forests, and to the protection, development and utilization of such other resources as may be of greater benefit to the public.

§ 63.3 *Definitions.* As used in this part:

- (a) "Secretary" means Secretary of the Interior;
- (b) "Director" means Director, Bureau of Land Management;
- (c) "Area Administrator" means Area Administrator, Bureau of Land Management, Juneau, Alaska;

¹In view of the provision of section 14 of the act of September 1, 1937 (50 Stat. 902; 48 U. S. C. 250m), which authorizes the Secretary of the Interior to regulate the grazing of reindeer upon the public lands in Alaska, reindeer leases are no longer issued under the Act of March 4, 1927 (44 Stat. 1452; 48 U. S. C. 741, et seq.). See 25 CFR Part 2—Reindeer in Alaska.

(d) "Manager" means Manager, Land Office, Bureau of Land Management, in whose district the lands involved are situated;

(e) "The act" means the act of March 4, 1927 (44 Stat. 1452, 48 U. S. C. secs. 471, 471a-471o);

(f) "Person" means individual, partnership, corporation or association;

(g) "Native" means any member of the aboriginal races inhabiting Alaska, of whole or not less than half blood;

(h) "District" means any grazing district established under the act.

§ 63.4 *Grazing districts; leases on acreage basis; exceptions.* (a) Pursuant to the act, grazing districts are hereby established, the boundaries of which shall be co-extensive with the boundaries of the public land districts in Alaska.

(b) Grazing leases will be granted only for such areas as may be deemed adequate and usable according to the needs of the lessee. Leases will provide for grazing on a definite area, and on an acreage basis, except where peculiar local conditions or the difficulties of administration make more practicable a lease based on the number of livestock to be grazed.

§ 63.5 *Lands subject to lease.* Vacant, unreserved and unappropriated public lands are subject to lease. Where these lands are embraced within the natural grazing grounds or routes of migration of animals such as caribou or moose, or have other important values for wildlife, the lands may be leased, in the discretion of the manager, subject to such special terms and conditions as may be determined. Except as to those reservations described in § 63.1, public lands within the boundaries of a grazing district which have been withdrawn for any

Published in 20 F. R. September 13, 1955

Copies to	Each AA	25	HFS	10
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All Regional and Field Solicitors	1 each		Mrs. Jean Wright Rm. 6126	1

purpose may be leased with the prior consent of the Department or agency having administrative jurisdiction thereof and subject to such additional terms and conditions as such Department or agency may impose.

§ 63.6 Qualifications of applicants. An applicant for a grazing lease is qualified if the applicant:

- (a) Is a citizen of the United States, or
- (b) Has on file before a court of competent jurisdiction a valid declaration of intention to become a citizen, or a valid petition for naturalization, or
- (c) Is a group, association, or corporation organized under the laws of the United States or of any State or Territory thereof, authorized to conduct business in Alaska, and the controlling interest in which is vested in persons who would be qualified under either paragraph (a) or (b) of this section.

§ 63.7 No right acquired by applicant prior to lease. The filing of an application will not segregate the land applied for from application by other persons for a grazing lease, or from other disposition under the public land laws. As the issuance of a lease is discretionary, the filing of an application for a lease will not in any way create any right in the applicant to a lease, or to the use of the lands applied for pending the issuance of a lease. Any such unauthorized use constitutes a trespass.²

§ 63.8 Classes of applicants; preference rights. (a) Applicants for grazing leases shall be given preference in the following order:

- (1) Natives.
- (2) Bona fide settlers.
- (3) Other qualified applicants.
- (b) Any person claiming a preference right to a lease under paragraph (a) above must furnish with the application required under § 63.9 a statement setting forth the facts on which such claim is made.

§ 63.9 Application for lease; schedule of operations. (a) An application for grazing lease must be executed in duplicate on form 4-469, and filed with the manager.

(b) The application must be accompanied by a schedule of the applicant's proposed annual program to develop and increase the number of livestock which will be grazed on the land, and showing the applicant's need for all the land applied for, to provide forage for the maximum number of livestock which the applicant intends to graze thereon.

² It is unlawful for any person to graze any class of livestock on the public lands in grazing districts in Alaska, except under authority of a lease or permit granted under the act. Any person who wilfully grazes livestock in such areas without such authority shall, upon conviction, be punished by a fine of not more than \$500. (Sec. 12, act of March 4, 1927; 48 U. S. C. 471k, and notice approved March 7, 1929.)

³ 18 U. S. C. 1001 makes it a crime for any person knowingly and wilfully to make to any Department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

(c) The applicant, upon request by the manager, must also furnish evidence of his financial responsibility consisting of a showing that he has the financial means or has made arrangements with an established financial institution to provide the capital necessary to commence and maintain his proposed schedule of operations.

§ 63.10 Maximum number of stock. The lease will indicate the maximum number of stock which may be grazed on the leased area, based on the condition of the range and its accessibility for summer and winter feeding. The manager may adjust the maximum number from time to time as the condition of the range may warrant.

§ 63.11 Annual rental; amount; adjustment; waiver. (a) Unless otherwise provided, each lessee shall pay to the manager such rental per acre or per head, as may be determined to be a fair charge for the grazing of livestock on the leased land. The rental under any grazing lease may be adjusted every three years. The date for making the annual payment will be specified in the lease. If the rental is to be paid according to the number of animals grazed, no charge will be made for the natural increase of grazing animals until the beginning of the following lease year.

(b) The manager, if he determines such action to be in the public interest by reason of (1) depletion or destruction of the range by any cause beyond the control of the lessee, or (2) calamity or disease causing wholesale destruction of or injury to livestock, may grant an extension of time for making payment, or reduce or waive the grazing fee under a lease so affected. An application for the desired relief should be filed with the manager and should state all pertinent details and itemize the losses sustained.

§ 63.12 Reduction in leased area, when area is excessive. Whenever, in the opinion of the manager, the leased land is excessive for the number of livestock to be grazed by the lessee, the manager may, after 30 days' notice to the lessee, reduce the lease area to the extent necessary, and the annual rental, if on an acreage basis, shall be reduced proportionately, effective at the beginning of the next lease year.

§ 63.13 Free grazing permits; leases to natives. (a) Any person may file application in duplicate on form 4-469 for a permit to graze, free of charge, not to exceed the number of livestock whose products are consumed or whose work is directly and exclusively used by the applicant or his family, for a term of not more than one year.

(b) Any native, or association of natives, may apply for a grazing lease on unleased public lands, and a lease may be issued to him or them as to other persons, except that no annual rental will be charged for such lease. The application must show, by a corroborated statement, that the applicant is an Eskimo or other native, or half-breed, or an association thereof, and entitled to such lease without charge. When an Eskimo or other native, through cooperative agreement, grazes his livestock

without payment of annual rental on a lease held by other lessees, any grazing fee charged the lessee for such land on the basis of acreage will be reduced in proportion to the relative number of such native-owned livestock, as compared to the total number on the leasehold.

§ 63.14 Protests. Protests against an application for a lease should be filed in duplicate, with the manager, contain a complete disclosure of all facts upon which the protest is based, and describe the lands involved in such protest; and should be accompanied by evidence of service of a copy of the protest upon the applicant. If the protestant desires to lease all or part of the land embraced in the application against which the protest is filed, the protest should be accompanied by an application for a grazing lease.

§ 63.15 Issuance of lease. If the application is complete and it is determined that a lease should be issued, the manager will prepare a proposed lease, with necessary copies, on form 4-470, for execution by the applicant. The forms, signed by the applicant, must be forwarded promptly to the manager, together with any required rental payment. The lease will be dated as of January 1 of the year in which it is issued, and the required rental for the first year will be adjusted on a pro rata monthly basis to cover that portion of the year subsequent to the lease issuance.

§ 63.16 Report of grazing operations, assignments, renewals. (a) Before April 1 of the second lease year and each lease year thereafter, the lessee shall file with the manager a report, in duplicate, on form 4-470a, of his grazing operations during the preceding year.

(b) No part of the leased land may be subleased. Proposed assignments of a lease, in whole or in part, must be filed in duplicate with the manager within 90 days from the date of its execution. Such assignments must contain all of the terms and conditions agreed upon by the parties thereto, must be accompanied by the same showing by the assignee as to qualifications, stock development schedule and financial responsibility as is required of applicants for a lease, and by the assignee's statement agreeing to be bound by the provisions of the lease. No assignment shall be effective until approved by the manager.

(c) An application for renewal of a grazing lease should be filed not less than four months but not more than eight months before the expiration date of the lease term. The renewal lease, if issued, will contain such terms and conditions as the manager may determine.

§ 63.17 Stock driveways; crossing permits; quarantine regulations. (a) The manager may establish stock driveways for the regular crossing of livestock across public lands, in such form and manner as he may determine.

(b) A permit for the crossing of livestock along a stock driveway or other public lands, including lands under grazing lease, may be issued free of charge,

upon application filed with the manager at least 30 days prior to the date the crossing is to begin. The application must show the number of stock to be driven, date of starting, approximate period of time required, and the land to be traversed.

(c) Persons driving or transporting stock across any public lands must comply with the quarantine and other sanitary laws prescribed by the Territorial or other proper authorities.

§ 63.18 *Rights reserved; public land laws applicable.* (a) Grazing leases under §§ 63.1 to 63.22 shall be subordinated to and shall be subject to modification or reduction by the manager to the extent necessary to permit:

(1) The protection, development and utilization, under applicable laws and regulations, of the mineral, timber, water, and other resources, or in the leased lands, including their use for agriculture.

(2) The allowance of applications for and the acquisition of homesites, easements, permits, leases, or other rights and uses, pursuant to applicable public land laws, where the same are in the public interest or will not unduly interfere with the use of the area for grazing purposes.

(3) The temporary closing of portions of the leased area to grazing whenever, because of improper handling of the stock, overgrazing, fire or other cause, such action is deemed necessary to restore the range to its normal condition.

(b) No lessee may so enclose roads, trails or other highways as to disturb public travel thereon, nor interfere with existing communication lines or other improvements on the leased area; he shall not prevent legal hunting, fishing or trapping on the land, or the ingress of miners, mineral prospectors and other persons entitled to enter the area for lawful purposes.

§ 63.19 *Termination of lease; cancellation.* (a) A lease may be surrendered by the lessee upon prior written notice filed with the manager, effective upon the date indicated in such notice but no less than 30 days from the date of filing, provided the lessee has complied with the terms and conditions of the lease and has paid all charges due thereunder.

(b) A lease may be cancelled by the manager if the lease was issued improperly through error with respect to a material fact or facts, or if the lessee shall fail to comply with any of the provisions of the lease or of §§ 63.1 to 63.22. No lease will be cancelled for default in complying with the provisions of the lease or of §§ 63.1 to 63.22 until the lessee has been notified in writing of the nature of the default and has been afforded an opportunity to show why the lease should not be cancelled.

§ 63.20 *Permits for construction and maintenance of improvements; fences.* (a) Application for a permit to construct and maintain range improvements should be filed with the manager

on form 4-1115, in duplicate. The lessee, upon obtaining a permit from the manager, may construct, maintain and utilize any fence, building, corral, reservoir, well, or other improvement needed for the exercise of the grazing privileges under the lease. The lessee will be required to comply with the laws of the Territory of Alaska with respect to the cost and maintenance of fences, but any such fence shall be constructed to permit the ingress and egress of miners, prospectors for minerals and other persons entitled to enter such area for lawful purposes.

§ 63.21 *Removal of improvements and other property.* (a) Improvements, fixtures, or personal property (other than livestock) may not be removed from the lands unless all moneys due the United States under the lease have been paid.

(b) If all moneys due have been paid and the lessee, on or before the termination of his lease, for any reason, notifies the manager of his determination to leave on the land improvements, the construction or maintenance of which has been authorized, no other person shall use or occupy, under any permit, lease or entry under any public land law, the land on which such improvements are located, until there has been paid to the person entitled thereto the value of such improvements. If the interested parties are unable to reach an agreement as to such value, the amount may be fixed by the manager. All such agreements, to be effective, must be approved by the manager. The failure of the subsequent permittee, lessee, or entryman to pay the former lessee in accordance with such agreement will be just cause for the cancellation of the permit, lease, or entry.

(c) In the absence of a notice by the lessee in accordance with paragraph (b) of this section, the lessee shall, within 90 days from the date of expiration or termination of the lease, and if all charges due thereunder have been paid, remove all personal property belonging to him, together with any fence, building, corral, or other removable range improvements owned by him. All such property which is not removed within the time allowed shall thereupon become the property of the United States.

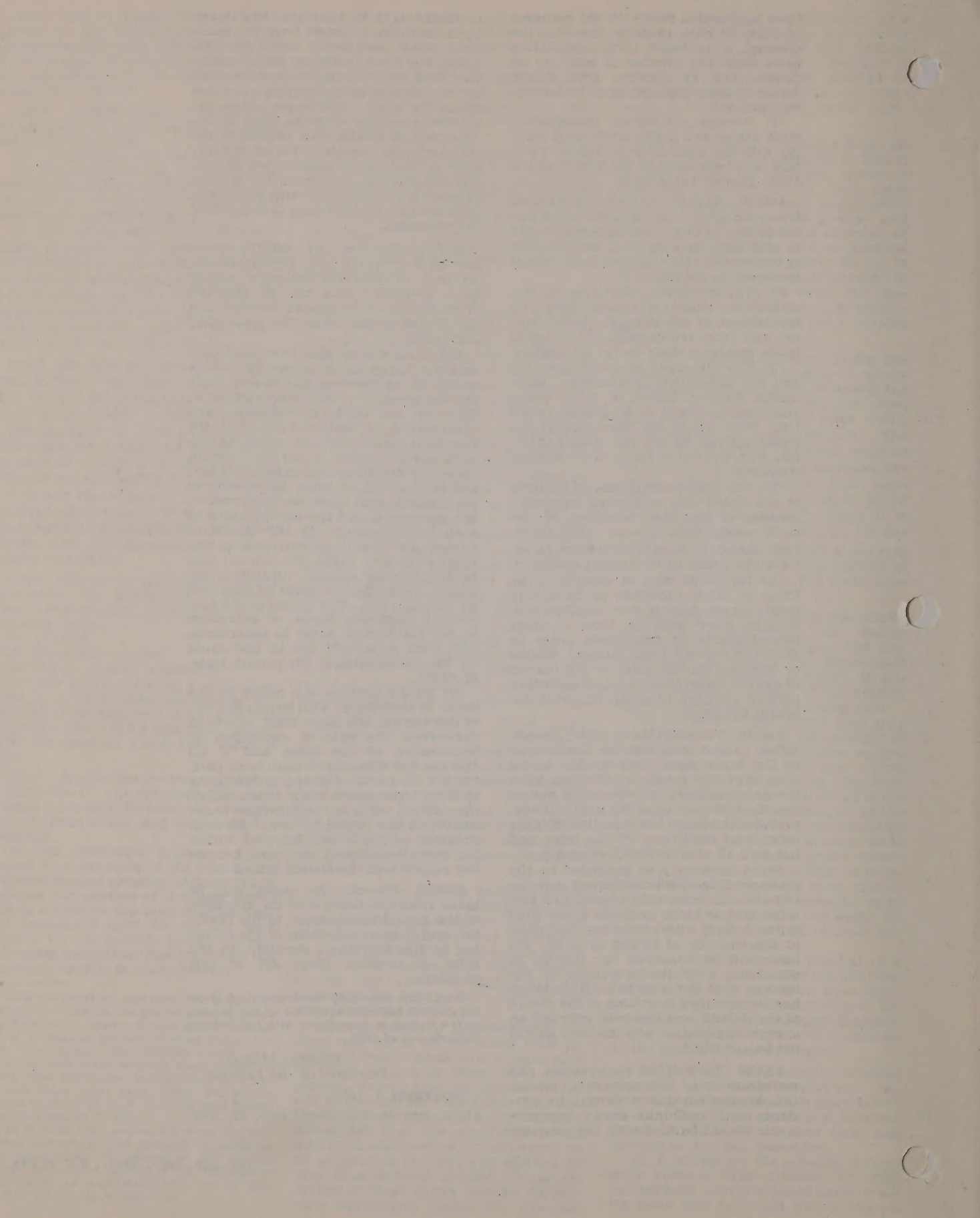
§ 63.22 *Appeals.* An appeal may be taken from any decision of the manager, or the Area Administrator, to the Director, and from any decision of the Director to the Secretary, pursuant to the rules of practice (Part 221 of this chapter).

NOTE: The reporting requirement of these regulations has been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

DOUGLAS MCKAY,
Secretary of the Interior.

SEPTEMBER 7, 1955.

[F. R. Doc. 55-7359; Filed, Sept. 12, 1955;
8:51 a. m.]



**TITLE 43—PUBLIC LANDS:
INTERIOR**

**Chapter I—Bureau of Land Management,
Department of the Interior**

[Circular No. 1930]

**PART 70—MINERAL LANDS; COAL PERMITS
AND LEASES AND LICENSES FOR FREE USE
OF COAL**

MISCELLANEOUS AMENDMENTS

New paragraphs (c) and (e) are added to §§ 70.11 and 70.15 respectively; § 70.24 is amended; and the present text of § 70.28 is designated as paragraph (a) and a new paragraph (b) is added at the end thereof, to read as follows:

§ 70.11 *Application for lease by competitive bidding.* * * *

(c) A filing fee of \$10, which will be retained as a service charge in any event, must accompany each application.

§ 70.15 *Modification and leasing of additional land or coal deposits; consolidation of leases of small areas.* * * *

(e) A filing fee of \$10, which will be retained as a service charge in any event, must accompany an application for modification of a lease under paragraph (a) or (b) of this section.

§ 70.24 *Reward for discovery.* A permittee who shows, that prior to the expiration of his permit, the land included in the permit contains coal in commercial quantities, is entitled to a preference right lease for all or part of the land, the area to be taken in compact form. An application for preference right lease must be filed in duplicate in the office specified in § 70.11 (a) promptly after commencement of commercial operations, but in no event later than the expiration of the period to which the permit is limited. The application must describe the land desired, set forth fully and in detail the extent and mode of occurrence of the coal deposits as disclosed by the prospecting work per-

formed under the permit, show that coal was discovered in commercial quantities before the date of the expiration of the permit and show any change in the information contained in the application for permit. The application must be accompanied by the rental for the first year of the lease, which shall be 25 cents for each acre or fraction thereof. The lease, if issued will be in accordance with the provisions of §§ 70.8 to 70.10, inclusive, and will be dated the first day of the month following the date of the decision notifying the applicant that he is entitled to a preference right lease, unless otherwise specified therein. If the permit expires and the application for lease is finally rejected, royalty for coal mined to the date of receipt of notice by the permittee of such rejection will be charged in accordance with the royalty terms of the permit and such mining of the coal will not constitute a trespass.

§ 70.28 *Area and duration.* * * *

(b) An application for renewal of a license must be accompanied by a filing fee of \$10, which will be retained as a service charge even though the application is later withdrawn or rejected.

(Sec. 17, 38 Stat. 745; 48 U. S. C. 451)

DOUGLAS MCKAY,
Secretary of the Interior.

SEPTEMBER 7, 1955.

[F. R. Doc. 55-7360; Filed, Sept. 12, 1955;
8:51 a. m.]

Published in 20 F. R. September 13, 1955

Copies to	Each AA	25	HFS	10	
	Each SO	10	ESO	10	
	Each LO	25	Wash. Staff Officers		5 each
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**TITLE 43—PUBLIC LANDS:
INTERIOR**

**Chapter I—Bureau of Land Manage-
ment, Department of the Interior**

[Circular No. 1931]

**PART 195—SODIUM PERMITS AND LEASES:
USE PERMITS**

**REWARD FOR DISCOVERY; USE PERMITS FOR
ADDITIONAL LANDS**

Sections 195.12 (a) and 195.26 (b) are amended to read as follows:

§ 195.12 *Reward for discovery.* (a) A permittee who discovers valuable sodium deposits in the land before the permit expires is entitled to a preference right lease of all or part of the lands in the permit, in a reasonably compact form as provided in § 195.3. An application for a preference right lease must be filed in duplicate in the appropriate land office not later than 30 days after the permit expires. The application must describe the lands desired, show any change in the information contained in the application for permit, specify fully the extent and mode of occurrence of the deposits as disclosed by the prospecting work, and show that valuable sodium deposits were discovered before the permit expired. The application should be accompanied by the rental for the first year of the lease, at the rate of 25 cents per acre or fraction thereof. The lease will be on Form 4-1134, and will be dated the first day of the month following the date of the decision notifying the applicant that he is entitled to a preference right lease, unless otherwise specified therein. If the permit expires and the application for lease is finally rejected, royalty for the deposits mined will be charged at the permit rate and such mining will not constitute a trespass.

§ 195.26 *Use permits for additional lands.* * * *

(b) Applications for permits to use additional land shall be filed in the appropriate land office. A filing fee of \$10, which will be retained as a service charge in any event, must accompany each application. Such applications must state why the additional land is necessary, describe the land in accordance with § 195.17 (a) (2), and state whether it is unoccupied and nonmineral. The application must also contain an agreement to pay the annual charge prescribed in the permit. Use permits will be issued on Form 4-1135 and dated as of the first day of the month after its issuance unless the applicant requests that it be dated the first day of the month of issuance.

(Sec. 32, 41 Stat. 450; 30 U. S. C. 189)

DOUGLAS MCKAY,
Secretary of the Interior.

SEPTEMBER 7, 1955.

[F. R. Doc. 55-7361; Filed, Sept. 12, 1955;
8:51 a. m.]

Published in 20 F. R., September 13, 1955

Copies to	Each AA	25	HFS	10	
	Each SO	10	ESO	10	
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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Manage- ment, Department of the Interior

Subchapter L—Mineral Lands

[Circular No. 1932]

PART 193—COAL PERMITS, LEASES AND LICENSES

MISCELLANEOUS AMENDMENTS

A new paragraph (c) is added to § 193.11; paragraph (a) of § 193.15 is amended; new paragraphs (d) and (c) are added to §§ 193.15 and 193.23, respectively; § 193.24 is amended; and a new paragraph (c) is added to §§ 193.25 and 193.28, to read as follows:

§ 193.11 *Application for lease.* * * *

(c) A filing fee of \$10, which will be retained as a service charge in any event, must accompany each application.

§ 193.15 *Modification and leasing of additional land or coal deposits.* (a) Under section 3 of the act (30 U. S. C. 203), a lessee may obtain a modification of his lease to include coal lands or coal deposits contiguous to those embraced in his lease if the authorized officer determines that it will be to the advantage of the lessee and the United States, but in no event shall the area embraced in such modified lease exceed in the aggregate 2,560 acres, except where the rule of approximation applies. The lessee shall file his application for modification in duplicate in the proper land office describing the additional lands desired, the needs and reasons for and the advantage to the lessee of such modification. Upon determination by the authorized officer that the modification is justified and the interest of the United States is protected, the lease will be modified without competitive bidding to include such part of the land or deposits as he shall prescribe. If, however, it is determined that the additional lands or deposits can be developed as part of an independent operation or that there is a competitive interest in them, they may be offered as provided in § 193.13.

* * * * *

(d) A filing fee of \$10, which will be retained as a service charge in any event, must accompany an application for modification of a lease under paragraph (a) or (b) of this section.

§ 193.23 *Extension of permits.* * * *

(c) An application for extension of a permit must be accompanied by a filing fee of \$10, which will be retained as a service charge even though the application is later withdrawn or rejected.

§ 193.24 *Reward for discovery.* A permittee who shows, that prior to the expiration of his permit, the land included in the permit contains coal in commercial quantities, is entitled to a preference right lease for all or part of the land, the area to be taken in a reasonably compact form. An application for preference right lease must be filed in duplicate in the office specified in § 193.11 promptly after commencement of commercial operations, but in no event later than the expiration of the period to which the permit is limited. The application must describe the land desired, set forth fully and in detail the extent and mode of occurrence of the coal deposits as disclosed by the prospecting work performed under the permit, show that coal was discovered in commercial quantities before the date of the expiration of the permit and show any change in the information contained in the application for permit. The application must be accompanied by the rental for the first year of the lease, which shall be twenty-five cents for each acre or fraction thereof. The lease, if issued, will be in accordance with the provisions of §§ 193.8 to 193.10, inclusive, and will be dated the first day of the month following the date of the decision notifying the applicant that he is entitled to a preference right lease, unless otherwise specified therein. If the permit expires and the application for lease is finally rejected royalty for coal mined to the date of receipt of notice by the permittee of such rejection will be charged in accordance with the royalty terms of the permit and such mining of the coal will not constitute a trespass.

§ 193.25 *Transfers, including sub-leases.* * * *

(c) An application for approval of any instrument transferring a lease, or interest therein, must be accompanied by a service fee of \$10. An application not accompanied by such a fee will not be accepted. The fee will not be returned even though the application is later withdrawn or rejected.

§ 193.28 *Area and duration.* * * *

(c) An application for renewal of a license must be accompanied by a filing fee of \$10, which will be retained as a service charge even though the application is later withdrawn or rejected.

(Sec. 32, 41 Stat. 450; 30 U. S. C. 189)

DOUGLAS MCKAY,
Secretary of the Interior.

SEPTEMBER 7, 1955.

[F. R. Doc. 55-7362; Filed, Sept. 12, 1955;
8:51 a. m.]

Published in 20 F. R. September 13, 1955

Copies to	Each AA	25	BFS	10	
	Each SO	10	ESO	10	
	Each LO	25	Wash. Staff Officers		5 each
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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Manage- ment, Department of the Interior

[Circular 1933]

PART 102—AGRICULTURAL ENTRIES ON MINERAL LANDS

STATUTORY AUTHORITY

Sections 102.6 (a) and 102.19 (a) are amended to read as follows:

§ 102.6 *Statutory authority.* (a) Section 1 of the act of June 22, 1910 (36 Stat. 583; 30 U. S. C. 83) provides that from and after its passage, the unreserved public lands of the United States, exclusive of Alaska, which have been withdrawn or classified as coal lands, or are valuable for coal, shall be subject to appropriate entry under the homestead laws by actual settlers only, the desert land law, selection under section 4 of the act approved August 18, 1894, known as the Carey Act (28 Stat. 422; 43 U. S. C. 641), and to withdrawal under the act approved June 17, 1902 (32 Stat. 388; 43 U. S. C. 372 et seq.), known as the Reclamation Act, whenever such entries, selections, or withdrawals shall be made with a view of obtaining or passing title, with a reservation to the United States of the coal in such lands and of the right to prospect for, mine, and remove the same; and that all homestead entries made thereunder shall be subject to the conditions, as to residence and cultivation, of entries provided for under the act approved February 19, 1909 (35 Stat. 639; 43 U. S. C. 218), entitled "An act to provide for an enlarged homestead."

The act of February 19, 1909, was amended by the act of June 6, 1912 (37 Stat. 123; 43 U. S. C. 164, 169, 218).

§ 102.19 *Statutory authority.* (a) Section 1 of the act of July 17, 1914 (38 Stat. 509; 30 U. S. C. 121), authorizes the appropriation, location, selection, entry, or purchase under the nonmineral land laws of the United States, if otherwise available, of lands withdrawn or classified as phosphate, nitrate, potash, oil, gas, or asphaltic minerals, or which are valuable for such deposits, whenever such lands are sought with a view of obtaining or passing title with a reservation to the United States of the deposits on account of which the lands were withdrawn, classified, or reported as valuable, together with the right to prospect for, mine, and remove the same. Any form of appropriation under the proper applicable nonmineral land laws is authorized, with a reservation of the minerals as specified, to the same extent as if no withdrawal or classification had been made.

(R. S. 2478; 43 U. S. C. 1201. Interpret or apply sec. 1, 36 Stat. 583, sec. 1, 38 Stat. 509, as amended, 69 Stat. 138; 30 U. S. C. 83, 121)

DOUGLAS MCKAY,
Secretary of the Interior.

SEPTEMBER 8, 1955.

[F. R. Doc. 55-7465; Filed, Sept. 14, 1955;
8:51 a. m.]

Published in 20 F. R. September 15, 1955

Copies to	Each AA	25	BFS	10	
	Each SO	10	ESO	10	
	Each LO	25	Wash. Staff Officers		5 each
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OCT 28 1955

TITLE 43—PUBLIC LANDS:
INTERIORChapter I—Bureau of Land Management,
Department of the Interior

[Circular 1934]

PART 232—DESERT LAND ENTRIES

MISCELLANEOUS AMENDMENTS

Sections 232.5, 232.6, 232.9, and 232.16 are amended to read as follows:

§ 232.5 *Quantity of lands that may be entered.* An entry of lands under the act of March 3, 1877, is limited to 320 acres, subject to the following additional limitations:

(a) An entry of lands within an irrigation district which the Secretary of the Interior or his delegate has approved under the act of August 11, 1916 (39 Stat. 506; 43 U. S. C. 621-630), is limited to 160 acres.

(b) An entryman may have a desert-land entry for such a quantity of land as, taken together with all land acquired and claimed by him under the other agricultural land laws since August 30, 1890, does not exceed 320 acres in the aggregate, or 480 acres if he shall have made an enlarged homestead entry of 320 acres (acts of August 30, 1890; 26 Stat. 391; 43 U. S. C. 212; and of February 27, 1917; 39 Stat. 946; 43 U. S. C. 330).

§ 232.6 *Second and additional entries.* A person's right of entry under the desert-land law is exhausted either by filing an allowable application and withdrawing it prior to its allowance or by making an entry or by taking an assignment of an entry, in whole or in part, except under the conditions described in paragraphs (a) and (b) of this section.

(a) Under the act of September 5, 1914 (38 Stat. 712; 43 U. S. C. 182), if a person, otherwise duly qualified to make a desert-land entry, has previously filed an allowable application, or made such entry or entries and through no fault of his own has lost, forfeited, or abandoned the same, such person may make another entry. In such case, however, it must be shown that the prior application, entry, or entries were made in good faith, and were lost, forfeited, or abandoned because of matters beyond the applicant's control, and that the applicant has not speculated in his right, nor committed a fraud or attempted fraud in connection with such prior entry or entries. As the assignment of an entry involves no loss, forfeiture, or abandonment thereof, but carries a benefit to the assignor, it is held to exhaust his right of entry under the desert-land law. Hence, no person who has assigned such entry, in whole or in part, will be permitted to make another entry or to take one or any part thereof by assignment except where paragraph (b) of this section applies.

(b) The act of June 16, 1955 (69 Stat. 138) authorizes any person, who prior to June 16, 1955, made a valid desert-land entry on lands subject to the acts of June 22, 1910 (36 Stat. 583; 30 U. S. C. 83-85), or of July 17, 1914 (38 Stat. 509; 30 U. S. C. 121-123), if otherwise qualified, to enter as a personal privilege, not assignable, an additional tract of desert land, providing such additional tract shall not, together with the original entry, exceed 320 acres. Applicants and entrymen under the act of June 16, 1955, are subject to, and must comply with, all the regulations of this part, including the acreage limitations of § 232.5.

§ 232.9 *Application for desert-land entry.* (a) A person who desires to make entry under the desert-land laws must file with the manager of the proper land office an application, in duplicate, showing that he is a citizen of the United States, or has declared his intention to become such citizen; that he is 21 years of age or over; and that he is a bona fide resident of the State in which the land sought to be entered is located, except in the State of Nevada, where the qualification as to citizenship is that of the United States only (41 Stat. 1086; 43 U. S. C. 323, 325). He must also state that, when § 232.6 (a) and (b) do not apply, he has not previously exercised the right of entry under the desert-land laws by filing an allowable application and withdrawing it prior to its allowance or by making an entry or by having taken one by assignment; that he has personally examined every legal subdivision of the land sought to be entered; that he has not, since August 30, 1890, acquired title, under any of the agricultural land laws, to lands which, together with the land applied for, will exceed in the aggregate 320 acres, or 480 acres in case he has made an enlarged homestead for 320 acres; and that he intends to reclaim the lands applied for by conducting water thereon within 4 years from the date of his application. The application must contain a descrip-

tion of the land by legal subdivisions, section, township, and range. If the application is made for lands, withdrawn or classified as coal lands or for lands withdrawn, classified, or reported as containing phosphate, nitrate, potash, sodium, sulphur, oil, gas, or asphaltic minerals, or valuable therefor, the applicant also must state in his application that the same is made in accordance with and subject to the act of June 22, 1910 (36 Stat. 583; 30 U. S. C. 83-85), or the act of July 17, 1914 (38 Stat. 509; 30 U. S. C. 121-123), as the case may be.

(b) The application will be considered as a petition for the classification of the land as provided in Part 296 of this chapter.

§ 232.16 *Qualifications of assignees.*

(a) The act of March 28, 1908, also provides that no person may take a desert-land entry by assignment unless he is qualified to enter the tract so assigned to him. Therefore, if a person is not at least 21 years of age and, excepting Nevada, a resident citizen of the State wherein the land involved is located; or if he is not a citizen of the United States, or a person who has declared his intention to become a citizen thereof; or, if he has made a desert-land entry in his own right and is not entitled under § 232.6 to make a second or an additional entry, he cannot take such an entry by assignment. The language of the act indicates that the taking of an entry by assignment is equivalent to the making of an entry, and this being so, no person is allowed to take more than one entry by assignment, unless it be done as the exercise of a right of second or additional entry.

(b) A person who has the right to make a second or additional desert-land entry may exercise that right by taking an assignment of a desert-land entry, or part of such entry, if he is otherwise qualified to make a desert-land entry for the particular tract assigned.

(c) The act of March 28, 1908, also provides that no assignment to or for the benefit of any corporation shall be authorized or recognized.

(69 Stat. 138 and R. S. 2478; 43 U. S. C. 1201)

DOUGLAS MCKAY,
Secretary of the Interior.

SEPTEMBER 8, 1955.

[F. R. Doc. 55-7466; Filed, Sept. 14, 1955;
8:51 a. m.]

Published in 20 F. R. September 15, 1955

Copies to	Each AA	25	BFS	10
	Each SO	10	ESO	10
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**TITLE 43—PUBLIC LANDS:
INTERIOR**

**Chapter I—Bureau of Land Manage-
ment, Department of the Interior**

[Circular 1935]

**PART 257—SALE OR LEASE OF SMALL TRACTS,
NOT EXCEEDING FIVE ACRES, FOR RESI-
DENCE, RECREATION, BUSINESS, OR COM-
MUNITY SITES**

APPLICATION; GENERAL PROCEDURE

A new paragraph (e) reading as follows, is added to § 257.6. *Application; general procedure.*

(e) An application on Form 4-776 will not be accepted, will not be considered as filed, and will be returned to the applicant if:

(1) The land description in the application does not conform with the classification order or official plat of survey, or if the lands are unclassified and unsurveyed, the metes and bounds description is inadequate to permit ready and accurate identification of the tract (see paragraph (b) of this section).

(2) The application is not accompanied by the filing fee of \$10 and the advance rental required by §§ 257.8 and 257.9, namely, the advance rental specified in the classification order or if the lands are not classified, \$100 for business sites and \$15 for other sites.

(3) The application is not signed by the applicant, or

(4) The lands applied for have either been—

(i) Classified for sale at public auction,

(ii) Classified for lease but not opened to application, or

(iii) Officially recorded as under consideration for small tract classification (see § 257.5).

(52 Stat. 609, as amended; 43 U. S. C. 682a. Interprets or applies R. S. 2478; 43 U. S. C. 1201)

DOUGLAS MCKAY,
Secretary of the Interior.

SEPTEMBER 23, 1955.

[F. R. Doc. 55-7842; Filed, Sept. 28, 1955;
8:46 a. m.]

Published in 20 F. R. September 29, 1955

Copies to	Each AA	25	BFS	10	
	Each SO	10	ESO	10	
	Each LO	25	Wash. Staff Officers		5 each
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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter S—Rights-of-Way

[Circular 1936]

PART 244—RIGHTS-OF-WAY OTHER THAN FOR RAILROAD PURPOSES AND FOR LOG- GING ROADS ON THE OREGON AND CALI- FORNIA AND OVER COOS BAY REVESTED LANDS

SUBPART F—RIGHTS-OF-WAY UNDER THE ACT OF JANUARY 21, 1895, OVER PUBLIC LANDS FOR TRAMROADS AND OTHER ROADS FOR LOGGING AND MINING PURPOSES, EXCEPT LOGGING ROADS OVER REVESTED AND RECONVEYED AND INTERMINGLED PUBLIC LANDS IN OREGON

TRAMROADS DEFINED; SPECIAL PROVISIONS FOR TEMPORARY RIGHTS-OF-WAY

Section 244.53 is revised to read as follows:

§ 244.53 *Tramroads defined; special provisions for temporary rights-of-way.*

(a) Tramroads are considered as including tramways, railroads, and motor-truck roads to be used in connection with mining, quarrying, logging, and the manufacturing of lumber.

(b) An application pursuant to § 244.52 and this section for a temporary right-of-way to be used for a period of not more than six months may be filed with the officer in charge of any local office of the Bureau of Land Management having jurisdiction over the lands. No special form for such an application is required but it should state whether the applicant or applicants are citizens of the United States and if a corpora-

tion, whether it is qualified under State law to acquire the right-of-way applied for and be accompanied by three copies of a map or sketch which shows the location of the right-of-way with a degree of accuracy sufficient for its position on the ground in relation to the lines and corners of the public land surveys or in relation to some prominent topographic feature, to be readily determined. Such a map or sketch or statement as to citizenship or qualification may be accepted as the basis for a permit for a temporary right-of-way even though it does not meet the requirements of other regulations in this part, if in the opinion of the authorized officer it would be in the public interest to do so. Within the discretion of the issuing officer, the holder of a temporary permit may be granted a single extension of the permit for a period of not more than six months. Notwithstanding the provisions of § 244.21, the charge for use and occupancy of public lands for such temporary rights-of-way shall be at the rate of 50 cents per mile or fraction thereof per month or fraction thereof, with a minimum rental charge of \$5 per right-of-way: *Provided*, That no rental charge shall be made for the use and occupancy of public lands for such temporary rights-of-way to be used for the purpose of removing mine or quarry products, timber, or timber products which have been acquired from the United States under contract or permit.

(28 Stat. 635, as amended; 43 U. S. C. 956)

OCTOBER 13, 1955.

DOUGLAS McKAY,
Secretary of the Interior.

[F. R. Doc. 55-8483; Filed, Oct. 19, 1955;
8:47 a. m.]

Published in 20 F.R. October 20, 1955

Copies to	Each AA	25	BFS	10	
	Each SO	10	ESO	10	
	Each LO	25	Wash. Staff Officers		5 each
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**TITLE 43—PUBLIC LANDS:
INTERIOR**

**Chapter I—Bureau of Land Management,
Department of the Interior**

Subchapter F—Color of Title and Riparian Claims
[Circular No. 1937]

**PART 141—COLOR OF TITLE AND RIPARIAN
CLAIMS APPLICABLE TO PARTICULAR
STATES**

Section 141.25 is revoked in its entirety.

CLARENCE A. DAVIS,
Acting Secretary of the Interior.

OCTOBER 24, 1955.

[F. R. Doc. 55-8697; Filed, Oct. 27, 1955;
8:47 a. m.]

Published in 20 F. R. October 28, 1955

Copies to	Each AA	25	BFS	10	
	Each SO	10	ESO	10	
	Each LO	25	Wash. Staff Officers		5 each
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**TITLE 43—PUBLIC LANDS:
INTERIOR**

**Chapter I—Bureau of Land Manage-
ment, Department of the Interior**

[Circular No. 1938]

**PART 200—MINERAL DEPOSITS IN ACQUIRED
LANDS AND UNDER RIGHTS-OF-WAY**

**LEASING OF MINERAL DEPOSITS OTHER THAN
OIL, GAS, OIL SHALE, COAL, PHOSPHATE,
POTASSIUM, SODIUM AND SULPHUR IN
CERTAIN ACQUIRED LANDS**

Section 200.50 is amended by adding a
paragraph (d) thereto, as follows:

§ 200.50 *Fractional or future interest
leases. * * **

(d) *Rejection and termination of ap-
plications.* An application for a future
interest lease filed less than one year
prior to the date of the vesting in the
United States of the present interest in
the minerals will be rejected. Upon the
vesting in the United States of the pres-
ent possessory interest in the minerals,
all applications for future interest leases
outstanding at that time will automat-
ically lapse and thereafter only offers
for a present interest lease will be
considered.

(Sec. 10, 61 Stat. 915; 30 U. S. C. 359)

CLARENCE A. DAVIS,
Acting Secretary of the Interior.

OCTOBER 24, 1955.

[F. R. Doc. 55-8696; Filed, Oct. 27, 1955;
8:47 a. m.]

Published in 20 F. R. October 28, 1955

Copies to	Each AA	25	BFS	10	
	Each SO	10	ESO	10	
	Each LO	25	Wash. Staff Officers		5 each
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Repl. C - 2151

TITLE 43—PUBLIC LANDS:
INTERIOR

Chapter I—Bureau of Land Manage-
ment, Department of the Interior

[Circular No. 1939]

PART 250—PUBLIC SALES

Section 250.11 (b) (3) is amended to
read as follows:

§ 250.11 *Action at close of bidding.*
• • •

(b) *Preference right of purchase;*
declaration of purchaser. • • •

(3) Where there is a conflict between
two or more persons claiming a pre-
ference right of purchase, they will be
allowed 30 days from receipt of notice
within which to agree among themselves
upon a division of the tracts by sub-
divisions. In the absence of an agree-
ment an equitable division of the land
will be made taking into consideration
such factors as (i) the equalizing of the
number of acres which each claimant
will be permitted to purchase, (ii) de-
sirable land use, based on topography,
land pattern, location of water, and
similar factors, and (iii) legitimate his-
torical use, including construction and
maintenance of authorized improve-
ments. If equitable considerations dic-
tate, all of the subdivisions may be
awarded to one of the claimants. Where
only one subdivision is offered for
sale and it adjoins the lands of two or
more preference right claimants, it will,
in the absence of equitable considera-
tions requiring otherwise, be awarded
to the applicant for the sale if he is a
qualified preference-right claimant; if
he is not, it will be awarded to the first
qualified person who properly asserts
such a preference right within or prior
to the 30-day preference-right period.
The manager will make the award by
declaring the appropriate claimant or
claimants purchasers of the land.

(R. S. 2478; 43 U. S. C. 1201)

CLARENCE A. DAVIS,
Acting Secretary of the Interior.

OCTOBER 24, 1955.

[F. R. Doc. 55-8695; Filed, Oct. 27, 1955;
8:46 a. m.]

Published in 20 F. R. October 28, 1955

Copies to	Each AA	25	BFS	10	
	Each SO	10	ESO	10	
	Each LO	25	Wash. Staff Officers		5 each
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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter D—Certificates and Scrip [Circular 1940]

PART 130—GENERAL REGULATIONS INVOLVING CERTIFICATES AND SCRIP

RECORDATION OF SCRIP, LIEU SELECTION, AND SIMILAR RIGHTS

Sections 130.5 to 130.8 are added to Part 130, as follows:

- Sec.
130.5 Statutory authority; types of rights affected.
130.6 Statutory time limits.
130.7 How to secure recordation.
130.8 Recordation and return of documents; significance of recordation.

AUTHORITY: §§ 130.5 to 130.8 issued under Pub. Law 247, 84th Cong.; 69 Stat. 534.

§ 130.5 *Statutory authority; types of rights affected.* (a) The act of August 5, 1955 (69 Stat. 534, 535), requires that any owner of, or any person claiming rights to, the scrip, lieu selection, and similar rights described in paragraph (b) of this section must present his holdings or claim for recordation by the Department of the Interior. The act further provides that claims or holdings not presented for recordation as required by the act will not thereafter be accepted by the Department of the Interior for recordation or as a basis for the acquisition of lands.

(b) The types of scrip, lieu selections and similar rights to which the act applies include the following, with the stated exception: Valentine scrip issued under the act of April 5, 1872 (17 Stat. 649); Sioux Half-Breed scrip issued under the act of July 17, 1854 (10 Stat. 304); Supreme Court scrip issued under the act of June 22, 1860 (12 Stat. 85), March 2, 1867 (14 Stat. 544) and June 10, 1872 (17 Stat. 378); Surveyor-General scrip issued under the act of June 2, 1858 (11 Stat. 294); soldiers' additional homestead right granted by sections 2306 and 2307 of the Revised Statutes; forest lieu selection right ascertainable under the act of March 3, 1905 (33 Stat. 1264); lieu selection right conferred by the act of July 1, 1898 (30 Stat.

597); bounty land warrant issued under the act of March 3, 1855 (10 Stat. 701); and any lieu selection or scrip right or bounty land warrant, or right in the nature of scrip issued under any act of Congress not enumerated above except indemnity selection rights of any State or the Territory of Alaska.

§ 130.6 *Statutory time limits.* The act requires owners of, and persons claiming rights to, any scrip, lieu selection, or similar rights described in § 130.5 (b) to present their claims or holdings for recordation within two years from August 5, 1955, with the following exceptions:

(a) Persons who, by transfer (by assignment, inheritance, operation of law, or otherwise) become owners of, or claimants of rights to, any such rights which have been recorded under the act must present their claims or holdings for recordation within six months after such transfer.

(b) Persons who, by transfer within the said period of two years from August 5, 1955, become owners of, or claimants of rights to, any such rights which have not been recorded under this act, must present their claims or holdings for recordation during the remainder of the said period of two years from August 5, 1955, or within six months from the date of such transfer, whichever period is longer.

§ 130.7 *How to secure recordation.* Persons who desire to record their holdings or claims under the act must present the following to the Director, Bureau of Land Management, Washington 25, D. C., within the time periods prescribed in § 130.6:

(a) A statement, in duplicate, captioned "Application for: Recordation of Scrip, Lieu Selection, or Similar Rights

under the act of August 5, 1955 (69 Stat. 534)," containing the (1) name and full post-office address of the applicant, (2) names and full post-office addresses of all the owners or claimants of the right presented for recordation, (3) the type of scrip or right presented (see paragraph (b) of § 130.5), and (4) the acreage of such scrip or right.

(b) The scrip, warrant, or other document which evidences their right, providing their right is based on such a document.

(c) A statement, in duplicate, showing the basis of their right, providing the right is not based on scrip, warrant, or other document.

§ 130.8 *Recordation and return of documents; significance of recordation.* Upon receipt of an application for recordation, the Director, Bureau of Land Management, will make a record of the holding or claim in the name of the owners or claimants cited in the application; will note the documentary evidence of right submitted (or one copy of the statement showing the basis of the right, if there be no documentary evidence) with the date and place of recording; and will return the evidence to the applicant. Such notation will constitute evidence merely that the holding or claim was recorded under the act and will otherwise have no bearing, one way or another, on the validity of the claim.

NOTE: The record keeping or reporting requirements of this regulation have been approved by the Bureau of the Budget, in accordance with the Federal Reports Act of 1942.

CLARENCE A. DAVIS,
Acting Secretary of the Interior.

OCTOBER 25, 1955.

[F. R. Doc. 55-8787; Filed, Oct. 31, 1955; 8:46 a. m.]

Published in 20 F. R. November 1, 1955

Copies to	Each AA	25	BFS	10	
	Each SO	10	ESO	10	
	Each LO	25	Wash. Staff Officers		5 each
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BUREAU OF LAND MANAGEMENT

**. . . LODE AND
PLACER MINING
REGULATIONS**

As Amended to and Including NOVEMBER 1, 1955

Title 43—Part 185

of the Code of Federal Regulations

Circular No. 1941



U. S. DEPARTMENT OF THE INTERIOR

DEPARTMENT OF LAND MANAGEMENT
CODE AND
MINING
REGULATIONS

Revised to and including NOVEMBER 1, 1922

Part 182
of the Code of Federal Regulations



DEPARTMENT OF THE INTERIOR

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Circular No. 1941

PART 185—GENERAL MINING REGULATIONS

Subpart A—Locations

GENERAL STATEMENT

- Sec.
185.1 Lands subject to location and purchase.
185.2 Definition of mineral under mining laws.
185.3 Manner of initiating rights under locations.
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SOURCE: §§ 185.1 to 185.100 appear at 19 F. R. 8995, December 23, 1954.

CROSS REFERENCES: For Bureau of Mines, Department of the Interior, see 30 CFR Chapter 1. For leases and sale of minerals, restricted Indian lands, see 25 CFR Chapter 1, Supchapter R. For regulations of the Forest Service, Department of Agriculture relating to mineral lands and mining claims, see 36 CFR Part 251.

SUBPART A—LOCATIONS

AUTHORITY: §§ 185.1 to 185.4 issued under R. S. 2478; 43 U. S. C. 1201.

GENERAL STATEMENT

§ 185.1 *Lands subject to location and purchase.* Vacant public surveyed or unsurveyed lands are open to prospecting, and upon discovery of mineral, to location and purchase, as are also lands in national forests in the public-land States, lands entered or patented under the stock-raising homestead law (title to minerals only can be acquired), lands entered under other agricultural laws but not perfected, where prospecting can be done peaceably, and lands within the railroad grants for which patents have not issued.¹

§ 185.2 *Definition of mineral under mining laws.* Whatever is recognized as a mineral by the standard authorities,

¹ Mining locations may be made in the States of Arizona, Arkansas, California, Colorado, Florida, Idaho, Louisiana, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming, also in the Territory of Alaska.

Lands in national parks and national monuments are not subject to mining location, except where specifically authorized by law.

(a) The mining laws were extended to the Death Valley National Monument, California, by the act of June 13, 1933 (48 Stat. 139; 16 U. S. C. 447), with a reservation of surface rights. They have also been extended to the Mount McKinley National Park and the Glacier Bay National Monument, both in Alaska. See Part 69 of this chapter. (b) Mining locations in the Olympic National Park, Washington, made prior to June 29, 1943, are governed by §§ 185.33a to 185.33g. (c) Mining locations in the Organ Pipe Cactus National Monument may be made pursuant to §§ 185.33h to 185.33o.

Lands in Indian reservations are not subject to the United States mining laws, except in the Papago Indian Reservation. See § 185.37.

For mining claims in national forests, see § 185.33.

Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands, located in Oregon, are subject to mining location in accordance with provisions of §§ 185.37a to 185.37e.

whether metallic or other substance, when found in public lands in quantity and quality sufficient to render the lands valuable on account thereof, is treated as coming within the purview of the mining laws. Deposits of coal, oil, gas, oil shale, sodium, phosphate, potash, and in Louisiana and New Mexico sulphur, belonging to the United States, can be acquired under the mineral leasing laws, and are not subject to location and purchase under the United States mining laws.

§ 185.3 *Manner of initiating rights under locations.* Rights to mineral lands, owned by the United States, are initiated by prospecting for minerals thereon, and, upon the discovery of mineral, by locating the lands upon which such discovery has been made. A location is made by staking the corners of the claim,² posting notice of location thereon and complying with the State laws, regarding the recording of the location in the county recorder's office, discovery work, etc.³

§ 185.4 *Who may make locations.* Citizens of the United States, or those who have declared their intention to become such, including minors who have reached the age of discretion and corporations organized under the laws of any State, may make mining locations. Agents may make locations for qualified locators.

SUBPART B—NATURE OF MINING CLAIMS

AUTHORITY: §§ 185.5 to 185.32 issued under R. S. 2478; 43 U. S. C. 1201.

§ 185.5 *Classes of claims.* Mining claims are of two distinct classes: Lode claims and placers.⁴

LODE CLAIMS

§ 185.6 *Lodes located previous to May 10, 1872.* The status of lode claims located or patented previous to May 10, 1872, is not changed with regard to their

² Except placer claims described by legal subdivision.

³ As supplemental to the United States mining laws there are State statutes relative to location, manner of recording of mining claims, etc., in the State, which should also be observed in the location of mining claims. Information as to State laws can be obtained locally or from State officials.

⁴ In addition, there are tunnel sites and mill sites. A mill-site location should be made in substantially the same manner as a lode or placer claim (54 I. D. 255).

extent along the lode or width of surface; but the claim is enlarged by sections 2322 and 2328, Revised Statutes (30 U. S. C. 26, 33),^{*} by investing the locator, his heirs or assigns, with the right to follow, upon the conditions stated therein, all veins, lodes, or ledges, the top or apex of which lies inside of the surface lines of his claim.

§ 185.7 *Lodes must not have been adversely claimed.* It is to be distinctly understood that the law limits the possessory right to veins, lodes, or ledges, other than the one named in the original location, to such as were not adversely claimed on May 10, 1872, and that where such other vein or ledge was so adversely claimed at that date the right of the party so adversely claiming is in no way impaired by the act of that date.

§ 185.8 *Length of lode claims.* From and after May 10, 1872, any person who is a citizen of the United States, or who has declared his intention to become a citizen, may locate, record, and hold a mining claim of 1,500 linear feet along the course of any mineral vein or lode subject to location; or an association of persons, severally qualified as above, may make joint location of such claim of 1,500 feet, but in no event can a location of a vein or lode made after May 10, 1872, exceed 1,500 feet along the course thereof, whatever may be the number of persons composing the association.

§ 185.9 *Extent of surface ground.* With regard to the extent of surface ground adjoining a vein or lode, and claimed for the convenient working thereof, the act of May 10, 1872, provides that the lateral extent of locations of veins or lodes made after said date shall in no case exceed 300 feet on each side of the middle of the vein at the surface, and that no such surface rights shall be limited by any mining regulations to less than 25 feet on each side of the middle of the vein at the surface, except where adverse rights existing on May 10, 1872, may render such limitation necessary; the end lines of such claims to be in all cases parallel to each other. Said lateral measurements can not extend beyond 300 feet on either side of the middle of the vein at the surface, or such distance as is allowed by local laws. For example: 400 feet can not be taken on

one side and 200 feet on the other. If, however, 300 feet on each side are allowed, and by reason of prior claims but 100 feet can be taken on one side, the locator will not be restricted to less than 300 feet on the other side; and when the locator does not determine by exploration where the middle of the vein at the surface is, his discovery shaft must be assumed to mark such point.

§ 185.10 *Restriction on width of claims by local laws.* No lode located after May 10, 1872, can exceed a parallelogram 1,500 feet in length by 600 feet in width, but whether surface ground of that width can be taken depends upon the local regulations or State or Territorial laws in force in the several mining districts. No such local regulations or State or Territorial laws shall limit a vein or lode claim to less than 1,500 feet along the course thereof, whether the location is made by one or more persons, nor can surface rights be limited to less than 50 feet in width unless adverse claims existing on May 10, 1872, render such lateral limitation necessary.

§ 185.11 *Defining of locations by claimants.*^a Locators can not exercise too much care in defining their locations at the outset, inasmuch as section 5 of the act of May 10, 1872 (17 Stat. 92; 30 U. S. C. 28) requires that all records of mining locations made subsequent to the date of said act shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located, by reference to some natural object or permanent monument, as will identify the claim.

§ 185.12 *Discovery required before location.* No lode claim shall be located until after the discovery of a vein or lode within the limits of the claim, the object of which provision is evidently to prevent the appropriation of presumed mineral ground for speculative purposes, to the exclusion of bona fide prospectors, before sufficient work has been done to determine whether a vein or lode really exists.

§ 185.13 *Discovery work.* The claimant should, therefore, prior to locating his claim, unless the vein can be traced upon the surface, sink a shaft or run a

^{*} Sections 2322 and 2328 were incorporated into the Revised Statutes from sections 3 and 9, respectively, of the act of May 10, 1872 (17 Stat. 91, 94; 30 U. S. C. 26, 33).

^a Section 5 of the act of May 10, 1872, now section 2324, Revised Statutes (30 U. S. C. 28), requires that "the location must be distinctly marked on the ground so that its boundaries can be readily traced."

tunnel or drift to a sufficient depth therein to discover and develop a mineral-bearing vein, lode, or crevice; should determine, if possible, the general course of such vein in either direction from the point of discovery, by which direction he will be governed in marking the boundaries of his claim on the surface.

§ 185.14 *Location notice; monumenting.* (a) The location notice should give the course and distance as nearly as practicable from the discovery shaft on the claim to some permanent, well-known points or objects, such, for instance, as stone monuments, blazed trees, the confluence of streams, point of intersection of well-known gulches, ravines, or roads, prominent buttes, hills, etc., which may be in the immediate vicinity, and which will serve to perpetuate and fix the locus of the claim and render it susceptible of identification from the description thereof given in the record of locations in the district, and should be duly recorded.

(b) In addition to the foregoing data, the claimant should state the names of adjoining claims, or, if none adjoin, the relative positions of the nearest claims; should drive a post or erect a monument⁷ of stones at each corner of his surface ground, and at the point of discovery or discovery shaft should fix a post, stake, or board, upon which should be designated the name of the lode, the name or names of the locators, the number of feet claimed, and in which direction from the point of discovery, it being essential that the location notice filed for record, in addition to the foregoing description, should state whether the entire claim of 1,500 feet is taken on one side of the point of discovery, or whether it is partly upon one and partly upon the other side thereof, and in the latter case, how many feet are claimed upon each side of such discovery point.

§ 185.15 *Location notices to be recorded.* The location notice must be filed for record in all respects as required by the State or Territorial laws and local rules and regulations, if there be any.

§ 185.16 *Annual assessment work.* In order to hold the possessory title to a mining claim located prior to May 10, 1872, the law requires that \$10 shall be

expended annually in labor or improvements for each 100 feet in length along the vein or lode. In order to hold the possessory right to a location made since May 10, 1872, not less than \$100 worth of labor must be performed or improvements made thereon annually. Under the provisions of the act of January 22, 1880, the first annual expenditure became due and must have been performed during the calendar year succeeding that in which the location was made. By the act of August 24, 1921 (42 Stat. 186; 30 U. S. C. 28), it was provided that the assessment period should thereafter commence at 12 o'clock meridian on the first day of July succeeding the date of the location of the claim. Where a number of contiguous claims are held in common, the aggregate expenditure that would be necessary to hold all the claims, may be made upon any one claim. Cornering locations are held not to be contiguous.

§ 185.17 *Failure to perform annual assessment work.* Failure to make the expenditure or perform the labor required upon a location made before or since May 10, 1872, will subject a claim to relocation unless the original locator, his heirs, assigns, or legal representatives have resumed work after such failure and before relocation.

§ 185.18 *Determination of right of possession between rival claimants.* The annual expenditure of \$100 in labor or improvements on a mining claim, required by section 2324 of the Revised Statutes (30 U. S. C. 28), is, with the exception of certain phosphate placer locations, validated by the act of January 11, 1915 (38 Stat. 792; 30 U. S. C. 131), under which regulations were issued March 31, 1915 (Circ. 396), solely a matter between rival or adverse claimants to the same mineral land, and goes only to the right of possession, the determination of which is committed exclusively to the courts.

§ 185.19 *Annual assessment work not required after patent certificate.* Annual expenditure is not required subsequent to entry, the date of issuing the patent certificate being the date contemplated by statute.

§ 185.20 *Failure of a co-owner to contribute to annual assessment work.* Upon the failure of any one of several co-owners to contribute his proportion of the required expenditures, the co-owners,

⁷ As to the importance of monuments, and as to their paramount authority, see the act of April 28, 1904 (33 Stat. 545; 30 U. S. C. 34), which amended section 2327 R. S.

who have performed the labor or made the improvements as required, may, at the expiration of the year, give such delinquent co-owner personal notice in writing, or notice by publication in the newspaper published nearest the claim for at least once a week for 90 days; and if upon the expiration of 90 days after such notice in writing, or upon the expiration of 180 days after the first newspaper publication of notice, the delinquent co-owner shall have failed to contribute his proportion to meet such expenditures or improvements, his interest in the claim by law passes to his co-owners who have made the expenditures or improvements as aforesaid. Where a claimant alleges ownership of a forfeited interest under the foregoing provision, the statement of the publisher as to the facts of publication, giving dates, and a printed copy of the notice published, should be furnished, and the claimant must state that the delinquent co-owner failed to contribute his proper proportion within the period fixed by the statute.

TUNNEL SITES

§ 185.21 *Possessory right of tunnel proprietor.* The effect of section 2323, Revised Statutes (30 U. S. C. 27), is to give the proprietors of a mining tunnel run in good faith the possessory right to 1,500 feet of any blind lodes cut, discovered, or intersected by such tunnel, which were not previously known to exist within 3,000 feet from the face or point of commencement of such tunnel, and to prohibit other parties, after the commencement of the tunnel, from prospecting for and making locations of lodes on the line thereof and within said distance of 3,000 feet, unless such lodes appear upon the surface or were previously known to exist. The term "face," as used in said section, is construed and held to mean the first working face formed in the tunnel, and to signify the point at which the tunnel actually enters cover; it being from this point that the 3,000 feet are to be counted upon which prospecting is prohibited as aforesaid.*

§ 185.22 *Location of tunnel claims.* To avail themselves of the benefits of this provision of law, the proprietors of a

mining tunnel will be required, at the time they enter cover as aforesaid, to give proper notice of their tunnel location by erecting a substantial post, board, or monument at the face or point of commencement thereof, upon which should be posted a good and sufficient notice, giving the names of the parties or company claiming the tunnel right; the actual or proposed course or direction of the tunnel, the height and width thereof, and the course and distance from such face or point of commencement to some permanent well-known objects in the vicinity by which to fix and determine the locus in manner heretofore set forth applicable to locations of veins or lodes, and at the time of posting such notice they shall, in order that miners or prospectors may be enabled to determine whether or not they are within the lines of the tunnel, establish the boundary lines thereof, by stakes or monuments placed along such lines at proper intervals, to the terminus of the 3,000 feet from the face or point of commencement of the tunnel, and the lines so marked will define and govern as to specific boundaries within which prospecting for lodes not previously known to exist is being prosecuted with reasonable diligence.

§ 185.23 *Recording of notices.* A full and correct copy of such notice of location defining the tunnel claim must be filed for record with the mining recorder of the district, to which notice must be attached the sworn statement or declaration of the owners, claimants, or prospectors of such tunnel, setting forth the facts in the case; stating the amount expended by themselves and their predecessors in interest in prosecuting work thereon; the extent of the work performed, and that it is bona fide their intention to prosecute work on the tunnel so located and described with reasonable diligence for the development of a vein or lode, or for the discovery of mines, or both, as the case may be. This notice of location must be duly recorded, and, with the said sworn statement attached, kept on the recorder's files for future reference.

PLACER CLAIMS

§ 185.24 *Maximum allowable acreage.* (a) By section 2330 of the Revised Statutes (30 U. S. C. 36), it is declared that no location of a placer claim made after

* Section 2323 of the Revised Statutes provides: "Failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins on the line of such tunnel."

July 9, 1870, shall exceed 160 acres for any one person or association or persons, which location shall conform to the United States surveys.

(b) Section 2331 of the Revised Statutes (30 U. S. C. 35) provides that all placer-mining claims located after May 10, 1872, shall conform as nearly as practicable with the United States system of public land surveys and the rectangular subdivisions of such surveys, and such locations shall not include more than 20 acres for each individual claimant.

(c) The foregoing provisions of law are construed to mean that after July 9, 1870, no location of a placer claim can be made to exceed 160 acres, whatever may be the number of locators associated together, or whatever the local regulations of the district may allow; and that from and after May 10, 1872, no location can exceed 20 acres for each individual participating therein; that is, a location by two persons can not exceed 40 acres, and one by three persons can not exceed 60 acres.

§ 185.25 *Discovery.* But one discovery of mineral is required to support a placer location, whether it be of 20 acres by an individual, or of 160 acres or less by an association of persons.

§ 185.26 *Locations authorized in 10-acre units.* By section 2330 of the Revised Statutes (30 U. S. C. 36), authority is given for subdividing 40-acre legal subdivisions into 10-acre tracts. These 10-acre tracts should be considered and dealt with as legal subdivisions, and an applicant having a placer claim which conforms to one or more of such 10-acre tracts, contiguous in case of two or more tracts, may make entry thereof, after the usual proceedings, without further survey or plat.

§ 185.27 *Manner of describing 10-acre units.* A 10-acre subdivision may be described, for instance if situated in the extreme northeast of the section, as the "NE. $\frac{1}{4}$ of the NE. $\frac{1}{4}$ of the NE. $\frac{1}{4}$ " of the section, or, in like manner, by appropriate terms, wherever situated; but in addition to this description, the notice must give all the other data required in a mineral application, by which parties may be put on inquiry as to the land sought to be patented. The proofs submitted with applications must show clearly the character and extent of the improvements upon the premises.

§ 185.28 *Conformity of placer claims to the public land surveys.* (a) All placer mining claims located after May 10, 1872, shall conform as near as practicable with the United States system of public-land surveys and the rectangular subdivisions of such surveys, whether the locations are upon surveyed or unsurveyed lands.

(b) Conformity to the public-land surveys and the rectangular subdivisions thereof will not be required where compliance with such requirement would necessitate the placing of the lines thereof upon other prior located claims or where the claim is surrounded by prior locations.

(c) Where a placer location by one or two persons can be entirely included within a square 40-acre tract, by three or four persons within two square 40-acre tracts placed end to end, by five or six persons within three square 40-acre tracts, and by seven or eight persons within four square 40-acre tracts, such locations will be regarded as within the requirements where strict conformity is impracticable.

(d) Whether a placer location conforms reasonably with the legal subdivisions of the public surveys is a question of fact to be determined in each case, and no location will be passed to patent without satisfactory evidence in this regard. Claimants should bear in mind that it is the policy of the Government to have all entries whether of agricultural or mineral lands as compact and regular in form as reasonably practicable, and that it will not permit or sanction entries or locations which cut the public domain into long narrow strips or grossly irregular or fantastically shaped tracts. (Snow Flake Fraction Placer, 37 L. D. 250.)

§ 185.29 *Annual expenditures.* The annual expenditure to the amount of \$100, required by section 2324, Revised Statutes (30 U. S. C. 28), must be made upon placer as well as lode locations.

§ 185.30 *Building-stone placers.* The act of August 4, 1892 (27 Stat. 348; 30 U. S. C. 161), extends the mineral land laws so as to bring lands chiefly valuable for building stone within the provisions of said laws.

CROSS REFERENCE: For entry on stone lands, see Part 285 of this chapter.

§ 185.31 *Saline placers.* (a) Under the act approved January 31, 1901 (31

Stat. 745; 30 U. S. C. 162),⁹ extending the mining laws to saline lands, the provisions of the law relating to placer-mining claims are extended to all States and the Territory of Alaska, so as to permit the location and purchase thereunder of all unoccupied public lands containing salt springs, or deposits of salt in any form, and chiefly valuable therefor, with the proviso, "That the same person shall not locate or enter more than one claim hereunder."

(b) Rights obtained by location under the placer-mining laws are assignable, and the assignee may make the entry in his own name; so, under this act a person holding as assignee may make entry in his own name: *Provided*, That he has not held under this act, at any time, either as locator or entryman, any other lands; his right is exhausted by having held under this act any particular tract, either as locator or entryman, either as an individual or as a member of an association. It follows, therefore, that no application for patent or entry, made under this act, shall embrace more than one single location.

(c) In order that the conditions imposed by the proviso, as set forth in paragraph (b) of this section, may duly appear, the application for patent must contain or be accompanied by a specific statement by each person whose name appears therein that he never has, either as an individual or as a member of an association, located or entered any other lands under the provisions of this act. The application for patent should also be accompanied by a showing, fully disclosing the qualifications as defined by the proviso, of the applicants' predecessors in interest.

§ 185.32 *Petroleum placers*. The act of February 11, 1897 (29 Stat. 526), provides for the location and entry of public lands chiefly valuable for petroleum or other mineral oils, and entries of that nature made prior to the passage of said act are to be considered as though made thereunder.¹⁰

⁹ This act was superseded by the Mineral-Leasing Act of February 25, 1920 (41 Stat. 437; 30 U. S. C. 181 et seq.), whereby saline (sodium) deposits were made subject to disposal by leases instead of mining locations.

¹⁰ This act was superseded by the Mineral Leasing Act of February 25, 1920 (41 Stat. 437).

SUBPART C—AREAS SUBJECT TO SPECIAL LAWS¹¹

NATIONAL FORESTS

§ 185.33 *Mining claims in national forests*. The act of June 4, 1897 (30 Stat. 36), provides that "any mineral lands in any forest reservation which have been or which may be shown to be such, and subject to entry under the existing mining laws of the United States and the rules and regulations applying thereto, shall continue to be subject to such location and entry," notwithstanding the reservation. This makes mineral lands in the forest reserves subject to location and entry under the general mining laws in the usual manner.¹²

(R. S. 2478; 43 U. S. C. 1201)

MINING CLAIMS IN THE OLYMPIC NATIONAL PARK, WASHINGTON

AUTHORITY: §§ 185.33a to 185.33g issued under sec. 2, 52 Stat. 1242; 16 U. S. C. 252.

§ 185.33a *Statutory authority*. (a) By the act of Congress approved June 29, 1938 (52 Stat. 1241; 16 U. S. C. 251-255), the Mount Olympus National Monument was abolished and certain described

¹¹ Mining locations may be made in the States of Arizona, Arkansas, California, Colorado, Florida, Idaho, Louisiana, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming, also in the Territory of Alaska.

Lands in national parks and national monuments are not subject to mining location, except where specifically authorized by law. See footnote to § 185.1.

Lands in Indian reservations are not subject to the United States mining laws, except in the Papago Indian Reservation. See § 185.37.

¹² Locators must comply with forest regulations. See 36 CFR 251.12.

For mining rights in the following national forests, see statutes indicated: In the Prescott National Forest, Arizona, 47 Stat. 771, 16 U. S. C. 482a (sec. 185.34 of this chapter); in the Mount Hood National Forest, Oregon, 48 Stat. 773, 16 U. S. C. 482b-482d; in the Lincoln National Forest, New Mexico, 53 Stat. 817, 16 U. S. C. 482e-482g; in the Coronado National Forest, Arizona, 54 Stat. 52, 16 U. S. C. 482h; in the Plumas National Forest, California, 16 U. S. C. 482i; and in the Harney 16 U. S. C. 678a-678b.

Mining claims cannot be located on lands in national forests acquired under the act of March 1, 1911 (36 Stat. 962ff; 16 U. S. C. 513-519) known as the Weeks Act. See §§ 200.31 to 200.36 of this chapter.

lands, including the lands in the Monument, were reserved, withdrawn from disposal, and dedicated and set apart as a public park to be known as the Olympic National Park. The act provides that valid existing claims shall not be affected thereby.

(b) Section 2 of the act provides:

That in the areas of said park lying east of the range line between ranges 9 and 10 and north of the seventh standard parallel, and east of the range line between ranges 4 and 5 west, Willamette meridian, all mineral deposits of the classes and kinds now subject to location, entry, and patent under the mining laws of the United States shall be, exclusive of the land containing them, subject to disposal under such laws for a period of five years from the date of approval of this Act, with rights of occupation and use of so much of the surface of the land as may be required for all purposes reasonably incident to the mining or removal of the minerals and under such general regulations as may be prescribed by the Secretary of the Interior.

§ 185.33b *Mining locations during 5-year period.* Under the provisions of section 2 of the act the lands within the area described in that section are, for a period of 5 years from the date of the act, open to prospecting for the kinds of mineral subject to location under the United States mining laws and upon the discovery of any such mineral, locations may be made in accordance with the provisions of the mining laws and regulations thereunder. Such locations duly made within the 5-year period will carry all the rights and incidents of mining locations, except that they will give to the locator no title to the land within their boundaries, or claim thereto, except the right to occupy and use so much of the surface of the land as required for all purposes reasonably necessary to mine and remove the minerals, such occupation and use to be under general regulations prescribed by the Secretary of the Interior. No prospecting may be done or locations made on the land after the expiration of the 5-year period from the date of this act, but the right to remove mineral deposits from valid locations made during the 5-year period may be maintained thereafter by complying with the requirements of the United States mining laws and §§ 185.33a-185.33g.

§ 185.33c *Cutting of timber.* The locator of a mining claim within the area

described in section 2 of the act may cut timber within the boundaries of his claim for mining and domestic uses only with the permission of the superintendent of the park or his representative who will designate the timber to be cut. All slash, brush or debris resulting from the cutting of timber upon mining claims shall be disposed of by the locator in such manner and at such time as may be designated by the National Park Service officer in charge so as to prevent the creation of fire hazards, or conditions conducive to the development of infestation by timber-destroying insects.

§ 185.33d *Construction of trails and roads.* Prospectors or miners shall not open or construct roads or vehicle trails without first obtaining a permit from the Director of the National Park Service. Applications for such permits may be made through the officer in charge of the park upon submitting a map or sketch showing the location of the mining property to be served and the location of the proposed road or vehicle trail. The permit may be conditioned upon the permittee maintaining the road or trail in a passable condition, satisfactory to the superintendent of the park, so long as it is used by the permittee or his successors.

§ 185.33e *Occupation and use of surface.* Occupation and use of the surface of a mining claim is restricted by section 2 of the act to such as is reasonably incident to the exploration, development and extraction of the minerals in the claim. Accordingly, any locator or patentee of a mining claim located under this section of the act will be entitled to such right. A locator or patentee shall not be entitled to the exclusive use of any hot or mineral springs which may be within the boundaries of his claim, or to any use of such springs for other than mining purposes. Prospectors and miners shall at all times conform to any rules now prescribed or which may be made applicable by the Secretary of the Interior to this park. Special attention is directed to those regulations prohibiting hunting, trapping, and the carrying of firearms within the boundaries of the park.

CROSS REFERENCE: For regulations of the Secretary of the Interior affecting this park, see 36 CFR Part 26.

§ 185.33f *Termination of right to use of surface of mining claims.* The right

of occupation and use of the surface of the land embraced in the boundaries of a location, entry or patent pursuant to section 2 of the act will terminate when the minerals are mined out or the claim is abandoned. Any locator of an unpatented claim who fails to perform annual assessment work on his claim for any assessment period will be assumed to have abandoned his claim, and his right of occupation and use of the surface of the claim considered at an end.

§ 185.33g *Title to minerals only.* Applications for patents and final certificates issued thereon for mining claims located under section 2 of the act should be noted "Olympic National Park Lands", and all patents issued for such claims will convey title to the minerals under the act and §§ 185.33a-185.33g.

MINING WITHIN THE ORGAN PIPE CACTUS NATIONAL MONUMENT IN ARIZONA

AUTHORITY: §§ 185.33h to 185.33o issued under 55 Stat. 745; 16 U. S. C. 450z.

§ 185.33h *Statutory authority.* By the act of Congress approved October 27, 1951 (55 Stat. 745; 16 U. S. C. 450z), all mineral deposits of the classes and kinds then subject to location, entry and patent under the United States mining laws within the Organ Pipe Cactus National Monument in Arizona, were made, exclusive of the land containing them, subject to disposal under such laws, with right of occupation and use of so much of the surface of the land as may be required for all purposes reasonably incident to the mining or removal of the minerals and under such general regulations as may be prescribed by the Secretary of the Interior.

§ 185.33i *Mining locations.* The lands within the Organ Pipe Cactus National Monument as established by Proclamation No. 2232 dated April 13, 1937 (50 Stat. 1827), are open to prospecting for the kinds of mineral subject to location under the United States mining laws and upon discovery of any such mineral, locations may be made in accordance with the provisions of the mining laws and regulations thereunder. Such locations duly made will carry all the rights and incidents of mining locations, except that they will give to the locator no title to the land within their boundaries, or claim thereto, except the right to occupy and use so much of the surface of the land as required for all purposes

reasonably necessary to mine and remove the minerals.

§ 185.33j *Occupation and use of surface.* Occupation and use of the surface of a mining claim is restricted by the act to such as is reasonably incident to the exploration, development and extraction of the minerals in the claim. Accordingly, any locator or patentee of a mining claim located under this act will be entitled to such right. Prospectors and miners shall at all times conform to any rules now prescribed or which may be made applicable by the Secretary of the Interior to this monument. Special attention is directed to those regulations prohibiting hunting, trapping, and the carrying of firearms within the boundaries of the monument.

§ 185.33k *Termination of right to use of surface of mining claims.* The right of occupation and use of the surface of the land embraced in the boundaries of a location, entry or patent pursuant to this act will terminate when the minerals are mined out or the claim is abandoned.

§ 185.33l *Title to minerals only.* Applications for patents and final certificates issued thereon for mining claims located under the act should be noted "Organ Pipe Cactus National Monument Lands," and all patents issued for such claims will convey title to the minerals only, and contain appropriate reference to the act and these regulations.

§ 185.33m *Destroying vegetation prohibited.* The locator of a mining claim within the monument area shall refrain from destroying or disturbing vegetation within the boundaries of his claim except as is necessary for the proper development thereof for mining purposes.

§ 185.33n *Construction of trails and roads.* Prospectors or miners shall not open or construct roads or vehicle trails without first obtaining a permit from the Director of the National Park Service. Applications for such permits may be made through the officer in charge of the monument upon submitting a map or sketch showing the location of the mining property to be served and the location of the proposed road or vehicle trail. The permit may be conditioned upon the permittee maintaining the road or trail in a passable condition, satisfactory to the officer in charge, so long as it is used by the permittee or his successors.

§ 185.330 *Lands containing certain features not subject to location.* Lands containing springs, wells, water holes, other sources of water supply, monument headquarters, and recreation areas are not subject to location.

CITY OF PRESCOTT WATERSHED, ARIZONA

§ 185.34 *Minerals in city of Prescott watershed in Arizona.* (a) The act of January 19, 1933 (47 Stat. 771; 16 U. S. C. 482a) applies to approximately 3,600 acres in the city of Prescott municipal watershed, within the Prescott National Forest, Arizona. Rights acquired under mining locations made after the date of the act on any of the described lands are limited to the right to occupy and use so much of the surface of the land covered by the location as is reasonably necessary to carry on prospecting and mining, including the taking of mineral deposits and timber required by or in the mining operations; and patents for such locations shall convey title to the mineral deposits and a limited right to cut and remove timber for mining purposes, such patent to reserve to the United States all title in or to the surface of the lands and products thereof.

(b) The manager will note on the face of all applications for patent for mining claims embracing any of the described lands that the same are subject to the conditions, provisions, limitations, and reservations of the act, except applications for claims located prior to the date of the act and as to which the applicants expressly request patent under the provisions of the general mining laws. Patents issued subject to the act will contain appropriate conditions with respect to cutting of timber and reservation of surface in the United States.

(c) Under section 3 of the act (47 Stat. 771; 16 U. S. C. 482a), valid claims existing at the date of the act and thereafter maintained may be perfected under this act or under the law under which they were initiated, as the claimant may desire. Such claimant may, therefore, continue the development of his claim under the provisions of the act and secure patent for the mineral deposits only under its provisions, or he may continue to hold under the general mining laws and secure patent which will convey to him the surface as well as the minerals in the claim.

(R. S. 2478; 43 U. S. C. 1201)

CROSS REFERENCE: For patents, generally, see Part 108 of this chapter.

WITHDRAWN LANDS

AUTHORITY: §§ 185.35 and 185.36 issued under R. S. 2478; 43 U. S. C. 1201.

§ 185.35 *Mineral locations in stock driveway withdrawals.* (a) Under authority of the provisions of the act of January 29, 1929 (45 Stat. 1144; 43 U. S. C. 300), the rules, regulations, and restrictions in this section are prescribed for prospecting for minerals of the kinds subject to the United States mining laws, and the locating of mining claims upon discovery of such minerals, in lands within stock driveway withdrawals made before or after May 4, 1929.

(b) All prospecting and mining operations shall be conducted in such manner as to cause no interference with the use of the surface of the land for stock driveway purposes, except such as may actually be necessary.

(c) While a mining location will be made in accordance with the usual procedure for locating mining claims, and will describe a tract of land, having due regard to the limitations of area fixed by the mining laws, the locator will be limited under his location to the right to the minerals discovered in the land and to mine and remove the same, and to occupy so much of the surface of the claim as may be required for all purposes reasonably incident to the mining and removal of the minerals.

(d) All excavations and other mining work and improvements made in prospecting and mining operations shall be fenced or otherwise protected to prevent the same from being a menace to stock on the land.

(e) No watering places shall be inclosed, nor proper and lawful access of stock thereto prevented, nor the watering of stock thereat interfered with.

(f) Prospecting for minerals and the location of mining claims on lands included in such withdrawals shall be subject to the provisions and conditions of the mining laws and the regulations thereunder.

(g) Mining claims on lands within stock driveway withdrawals, located prior to May 4, 1929, and subsequent to the date of the withdrawal, may be held and perfected subject to the provisions and conditions of the act and the regulations in this section.

(h) Every application for patent for any minerals located subject to this act

must bear on its face, before being executed by the applicant and presented for filing, the following notation:

Subject to the provisions of section 10 of the act of December 29, 1916 (39 Stat. 862), as amended by the act of January 29, 1929 (45 Stat. 1144).

Like notation will be made by the manager on the final certificates issued on such a mineral application.

(1) Patents issued on such applications will contain the added condition:

That this patent is issued subject to the provisions of the act of December 29, 1916 (39 Stat. 862), as amended by the act of January 29, 1929 (45 Stat. 1144), with reference to the disposition, occupancy and use of the land as permitted to an entryman under said act.

§ 185.36 *Mineral locations in reclamation withdrawals.*¹³ (a) The act of April 25, 1932 (47 Stat. 136; 43 U. S. C. 154), authorizes the Secretary of the Interior in his discretion to open to location, entry and patent under the general mining laws with reservation of rights, ways and easements, public lands of the United States which are known or believed to contain valuable deposits of minerals and which are withdrawn from development and acquisition because they are included within the limits of withdrawals made pursuant to section 3 of the reclamation act of June 17, 1902 (32 Stat. 388; 43 U. S. C. 416).

(b) Application to open lands to location under the act may be filed by a person, association or corporation qualified to locate and purchase claims under the general mining laws. The application must be executed in duplicate and filed in the land office of the district in which the lands are situated, must describe the land the applicant desires to locate, by legal subdivision if surveyed, or by metes and bounds if unsurveyed, and must set out the facts upon which is based the knowledge or belief that the lands contain valuable mineral deposits, giving such detail as the applicant may be able to furnish as to the nature of the formation, kind and character of the mineral deposits.

(c) When the application is received in the Bureau of Land Management, if found satisfactory, the duplicate will be

transmitted to the Bureau of Reclamation with request for report and recommendation. In case the Bureau of Reclamation makes an adverse report on the application, it will be rejected subject to right of appeal.

(d) If in the opinion of the Bureau of Reclamation the lands may be opened under the act without prejudice to the rights of the United States, the report will recommend the reservation of such ways, rights and easements considered necessary or appropriate, and/or the form of contract to be executed by the intending locator or entryman as a condition precedent to the vesting of any rights in him, which may be necessary for the protection of the irrigation interests.

CROSS REFERENCE: For Bureau of Reclamation regulation concerning waiver of mineral rights, see § 401.27 of this title.

PAPAGO INDIAN RESERVATION

§ 185.37 *Mineral locations in Papago Indian Reservation, in Arizona.* (a) The act of June 18, 1934 (48 Stat. 934; 25 U. S. C. 461-479), as amended by the act of August 28, 1937 (50 Stat. 862; 25 U. S. C. 463), revokes departmental order of October 28, 1932, which temporarily withdrew from all forms of mineral entry or claim the lands within the Papago Indian Reservation and restores, as of June 18, 1934, such lands to exploration, location and purchase under the existing mining laws of the United States.¹⁴

(b) The procedure in the location of mining claims, performance of annual labor and the prosecution of patent proceedings therefor shall be the same as provided by the United States mining laws and regulations thereunder, with the additional requirements hereinafter prescribed.

(c) In addition to complying with the existing laws and regulations governing the recording of mining locations with the proper local recording officer, the locator of a mining claim within the Papago Indian Reservation shall furnish to the superintendent or other officer in charge of the reservation, within 90 days of such location, a copy of the location notice, together with a sum amounting to 5 cents for each acre and 5 cents for each fractional part of an acre embraced

¹³ 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

¹⁴ The passage of Public Law 47, of May 27, 1955, prohibits further locations of mining claims on the Papago Indian Reservation after that date.

in the location for deposit with the Treasury of the United States to the credit of the Papago Tribe as yearly rental. Failure to make the required annual rental payment in advance each year until an application for patent has been filed for the claim shall be deemed sufficient grounds for invalidating the claim. The payment of annual rental must be made to the superintendent or other officer in charge of the reservation each year on or prior to the anniversary date of the mining location.

(d) Where a mining claim is located within the reservation, the locator shall pay to the superintendent or other officer in charge of the reservation damages for the loss of any improvements on the land in such a sum as may be determined by the Secretary of the Interior to be a fair and reasonable value of such improvements, for the credit of the owner thereof. The value of such improvements may be fixed by the Commissioner, Bureau of Indian Affairs, with the approval of the Secretary of the Interior, and payment in accordance with such determination shall be made within 1 year from date thereof.

(e) At the time of filing with the manager an application for mineral patent for lands within the Papago Indian Reservation the applicant shall furnish, in addition to the showing required under the general mining laws, a statement from the superintendent or other officer in charge of the reservation, that he has deposited with the proper official in charge of the reservation for deposit in the Treasury of the United States to the credit of the Papago Tribe a sum equal to \$1 for each acre and \$1 for each fractional part of an acre embraced in the application for patent in lieu of annual rental, together with a statement from the superintendent or other officer in charge of the reservation that the annual rentals have been paid each year and that damages for loss of improvements, if any, have been paid.

(g) The act provides that in case patent is not acquired the sum deposited in lieu of annual rentals shall be refunded. Where patent is not acquired, such sums due as annual rentals but not paid during the period of patent application shall be deducted from the sum deposited in lieu of annual rental. Applications for refund shall be filed in the office of the manager and should follow the general procedure in applications for repayment.

(h) Water reservoirs, charcos, water holes, springs, wells, or any other form of water development by the United States or the Papago Indians shall not be used for mining purposes under the terms of the said act of August 28, 1937, except under permit from the Secretary of the Interior approved by the Papago Indian Council.

(i) A mining location may not be located on any portion of a 10 acre legal subdivision containing water reservoirs, charcos, water holes, springs, wells or any other form of water development by the United States or the Papago Indians except under a permit from the Secretary of the Interior approved by the Papago Indian Council which permit shall contain such stipulations, restrictions, and limitations regarding the use of the land for mining purposes as may be deemed necessary and proper to permit the free use of the water thereon by the United States or the Papago Indians.

(j) The term "locator" wherever used in this section shall include and mean his successors, assigns, grantees, heirs, and all others claiming under or through him.

(R. S. 2478, 43 U. S. C. 1201)

**MINERAL LOCATIONS IN REVESTED OREGON
AND CALIFORNIA RAILROAD AND RECONVEYED
COOS BAY WAGON ROAD GRANT LANDS**

AUTHORITY: §§ 185.37a to 185.37e issued under R. S. 2478; 43 U. S. C. 1201.

§ 185.37a *General provisions.* (a) The act of April 8, 1948 (62 Stat. 162) reopens the revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands (hereinafter referred to in this section as the O. and C. lands) in Oregon, except power sites, to exploration, location, entry, and disposition under the United States Mining Laws. The act also validates mineral claims, if otherwise valid, located on the O. and C. lands during the period from August 28, 1937, to April 8, 1948.

(b) The procedure in the locating of mining claims, performance of annual labor, and the prosecution of mineral patent proceedings in connection with O. and C. lands is the same as provided by the United States Mining Laws and the general regulations in this part, and is also subject to the additional conditions and requirements hereinafter set forth.

§ 185.37b *Requirements for filing notices of locations of claims; descrip-*

tions. (a) Where prior to April 8, 1948, a mining claim has been located upon O. and C. lands, the owner thereof must file for record, not later than October 5, 1948, in the land office of the land district in which the claim is situated, a copy of the notice of location of the claim. With respect to all mining claims located on O. and C. lands on or after April 8, 1948, the owner thereof must file for record, within 60 days of the date of such mining location, in the appropriate land office, a copy of the notice of location of the claim.

(b) If the location affects surveyed lands and the copy of location notice does not describe those legal subdivisions, section, township and range partly or wholly covered by the mining claim, the copy must be accompanied by a statement of the owner of the claim describing the legal subdivisions affected.

(c) If the location affects unsurveyed lands and the copy of location notice does not show the land described therein connected by course and distance to the nearest corner of the public land surveys and does not give the probable legal subdivisions affected if the lands were surveyed, the copy must be accompanied by a statement of the owner of the claim giving that information or satisfactory reasons for not doing so.

(d) The name and address of each owner of the claim should be furnished with the other data required by this section.

§ 185.37c *Requirement for filing statements of assessment work.* The owner of any unpatented mining claim located upon O. and C. lands must also file for record in the district land office in which the claim is situated, within 60 days after the expiration of any annual assessment year, a statement as to the assessment work done or improvements made during the previous assessment year, or, as to compliance in lieu thereof, with any applicable relief act.

§ 185.37d *Restriction on use of timber; application for such use.* The owner of any unpatented mining claim located upon O. and C. lands on or after August 28, 1937, shall not acquire title, possessory or otherwise, to the timber, now or hereafter growing upon such claim. Such timber may be managed and disposed of under existing law or as may be provided by subsequent law. The owner of such unpatented mining claim, until such time as the timber is otherwise dis-

posed of by the United States, if he wishes to cut and use so much of the timber upon his claim as may be necessary in the development and operation of his mine, shall file a written application with the district forester for permission to do so. The application shall set forth the estimated quantity and kind of timber desired and the use to which it will be put. The applicant shall not cut any of the timber prior to the approval of the application therefor.

§ 185.37e *Applications for final certificates and patents.* Applications for patents and final certificates in connection with mining claims located upon O. and C. lands on or after August 28, 1937 must be noted "Mining claims on O. and C. lands, under the act of April 8, 1948." All patents issued on such claims located on or after August 28, 1937, shall contain an appropriate reference to the act of April 8, 1948, and shall indicate that the patent is issued subject to the conditions and limitations of the act.

CROSS REFERENCE: For other regulations governing the revested and reconveyed lands, see Part 115 of this chapter.

SUBPART D—PROCEDURE TO OBTAIN PATENT

AUTHORITY: §§ 185.38 to 185.72 Issued under R. S. 2478; 43 U. S. C. 1201.

LODE CLAIMS

§ 185.38 *Application for survey.* The claimant is required, in the first place, to have a correct survey of his claim made under authority of the proper cadastral engineer, such survey to show with accuracy the exterior surface boundaries of the claim, which boundaries are required to be distinctly marked by monuments on the ground.²⁵

§ 185.39 *Survey must be made subsequent to recording notice of location.* The survey and plat of mineral claims required to be filed in the proper land office with application for patent must be made subsequent to the recording of the location of the claim (if the laws of the State or Territory or the regulations of the mining district require the notice of location to be recorded), and when the

²⁵ Application for authorization of survey should be made to the cadastral engineer of the appropriate area Cadastral Engineering Office. In States for which there is no area office, applications for survey should be made to the Director of the Bureau of Land Management, Washington, D. C.

original location is made by survey of a mineral surveyor such location survey can not be substituted for that required by the statute, as above indicated.¹⁴

§ 185.40 *Plats and field notes of mineral surveys.* When the patent is issued, one copy of the plat and field notes shall accompany the patent and be delivered to the patentee.

§ 185.41 *Particulars to be observed in mineral surveys.* (a) The following particulars should be observed in the survey of every mining claim:

(1) The exterior boundaries of the claim, the number of feet claimed along the vein, and, as nearly as can be ascertained, the direction of the vein, and the number of feet claimed on the vein in each direction from the point of discovery or other well-defined place on the claim should be represented on the plat of survey and in the field notes.

(2) The intersection of the lines of the survey with the lines of conflicting prior surveys should be noted in the field notes and represented upon the plat.

(3) Conflicts with unsurveyed claims, where the applicant for survey does not claim the area in conflict, should be shown by actual survey.

(4) The total area of the claim embraced by the exterior boundaries should be stated, and also the area in conflict with each intersecting survey, substantially as follows:

	Acres
Total area of claim-----	10. 50
Area in conflict with survey No. 302---	1. 58
Area in conflict with survey No. 948---	2. 33
Area in conflict with Mountain Maid lode mining claim, unsurveyed-----	1. 48

(b) It does not follow that because mining surveys are required to exhibit all conflicts with prior surveys the areas of conflict are to be excluded. The field notes and plat are made a part of the application for patent, and care should be taken that the description does not inadvertently exclude portions intended to be retained. The application for patent should state the portions to be excluded in express terms.

§ 185.42 *Certificate of expenditures and improvements.* (a) The claimant at the time of filing the application for

patent, or at any time within the 60 days of publication, is required to file with the manager a certificate of the office cadastral engineer that not less than \$500 worth of labor has been expended or improvements made, by the applicant or his grantors, upon each location embraced in the application, or if the application embraces several contiguous locations held in common, that an amount equal to \$500 for each location has been so expended upon, and for the benefit of, the entire group; that the plat filed by the claimant is correct; that the field notes of the survey, as filed, furnish such an accurate description of the claim as will, if incorporated in a patent, serve to identify the premises fully, and that such reference is made therein to natural objects or permanent monuments as will perpetuate and fix the locus thereof.

(b) In case of a lode and millsite claim in the same survey the expenditure of \$500 must be shown upon the lode claim.

§ 185.43 *Mineral surveyor's report of expenditures and improvements.* (a) In the mineral surveyor's report of the value of the improvements all actual expenditures and mining improvements made by the claimant or his grantors, having a direct relation to the development of the claim, must be included in the estimate.

(b) The expenditures required may be made from the surface or in running a tunnel, drifts, or crosscuts for the development of the claim. Expenditures for drill holes for the purpose of prospecting and securing data upon which further development of a group of lode mining claims held in common may be based are available toward meeting the statutory provision requiring an expenditure of \$500 as a basis for patent as to all of the claims of the group situated in close proximity to such common improvement. Improvements of any other character, such as buildings, machinery, or roadways, must be excluded from the estimate, unless it is shown clearly that they are associated with actual excavations, such as cuts, tunnels, shafts, etc., are essential to the practical development of and actually facilitate the extraction of mineral from the claim.

(c) Improvements made by a former locator who has abandoned his claim can not be included in the estimate, but should be described and located in the notes and plat.

¹⁴ All matters, relating to the duties of mineral surveyors, and to the field and office procedure to be observed in the execution of mineral surveys, are set forth in Chapter X of the Manual of Instructions for the Survey of the Public Lands of the United States, 1947.

§ 185.44 *Supplemental proof of expenditures and improvements.* If the value of the labor and improvements upon a mineral claim is less than \$500 at the time of survey the mineral surveyor may file with the cadastral engineer supplemental proof showing \$500 expenditure made prior to the expiration of the period of publication.

§ 185.45 *Amended mineral surveys.* (a) Inasmuch as amended surveys are ordered only by special instructions from the Bureau of Land Management, and the conditions and circumstances peculiar to each separate case and the object sought by the required amendment, alone govern all special matters relative to the manner of making such survey and the form and subject matter to be embraced in the field notes thereof but few general rules applicable to all cases can be laid down.

(b) The expense of amended surveys, including amendment of plat and field notes, and office work in the Bureau of Land Management office will be borne by the claimant.

(c) The amended survey must be made in strict conformity with, or be embraced within, the lines of the original survey. If the amended and original surveys are identical, that fact must be clearly and distinctly stated in the field notes. If not identical, a bearing and distance must be given from each established corner of the amended survey to the corresponding corner of the original survey. The lines of the original survey, as found upon the ground, must be laid down upon the preliminary plat in such manner as to contrast and show their relation to the lines of the amended survey.

§ 185.46 *Mineral surveyors may not act in certain matters.* The duty of a mineral surveyor in any particular case ceases when he has executed the survey and returned the field notes and preliminary plat, with his report, to the cadastral engineer. He will not be allowed to prepare for the mining claimant the papers in support of his application for patent. He is not permitted to combine the duties of surveyor and notary public in the same case by administering oaths. It is preferable that both preliminary and final oaths of assistants should be taken before some officer duly authorized to administer oaths, other than the mineral surveyor. In cases, however, where great delay, expense, or

inconvenience would result from a strict compliance with this section, the mineral surveyor is authorized to administer the necessary oaths to his assistants, but in each case where this is done, he will submit to the proper cadastral engineer a full written report of the circumstances which required his stated action; otherwise he must have absolutely nothing to do with the case, except in his official capacity as surveyor. He will not employ field assistants interested therein in any manner.

CROSS REFERENCE: For practitioner disqualifications, see § 1.5 of this title.

§ 185.47 *Parties who may not assist in making surveys.* The employing of claimants, their attorneys, or parties in interest, as assistants in making surveys of mineral claims will not be allowed.

§ 185.48 *Contract for surveys.* (a) The claimant is required, in all cases, to make satisfactory arrangements with the surveyor for the payment for his services and those of his assistants in making the survey, as the United States will not be held responsible for the same.¹⁷

(b) Neither the cadastral engineer nor the area administrator has jurisdiction to settle differences relative to the payment of charges for field work, between mineral surveyors and claimants. These are matters of private contract and must be enforced in the ordinary manner, i. e., in the local courts. The Department has, however, authority to investigate charges affecting the official actions of mineral surveyors, and will, on sufficient cause shown, suspend or revoke their appointment.

§ 185.49 *Appointment of mineral surveyors.* (a) Pursuant to section 2334 of the Revised Statutes (30 U. S. C. 39), each area administrator will appoint as surveyors for the survey of mining claims applicants found to be competent, to the extent needed to meet the demand for that class of work. Each appointee shall qualify as prescribed by the area administrator and shall furnish a performance bond of not less than \$5,000 before entering on duty. Each mineral surveyor shall be eligible to survey mining claims in the States within

¹⁷ All matters relating to the duties of mineral surveyors, and to the field and office procedure to be observed in the execution of mineral surveys, are set forth in Chapter X of the Manual of Instructions for the Survey of the Public Lands of the United States, 1947.

the region in which he is appointed and in adjoining States. Each area administrator shall maintain a register showing the names and addresses of mineral surveyors appointed for the region and eligible for the survey of mining claims. The area administrator shall furnish the area administrator of each adjoining area with a copy of such register, and shall advise them of any changes therein.

(b) A mineral claimant may employ any United States mineral surveyor qualified as indicated in paragraph (a) of this section to make the survey of his claim. All expenses of the survey of mining claims and the publication of the required notices of application for patent are to be borne by the mining claimants.

§ 185.50 *Payment of charges of the public survey office.* With regard to the platting of the claim and other office work in the Bureau of Land Management office, including the preparation of the copies of the plat and field notes to be furnished the claimant, that office will make an estimate of the cost thereof, which amount the claimant will deposit with it to be passed to the credit of the fund created by "Deposits by Individuals for Surveying Public Lands."

§ 185.51 *Plat and notice to be posted on claim.* The claimant is required to post a copy of the plat of survey in a conspicuous place upon the claim, together with notice of his intention to apply for a patent therefor, which notice will give the date of posting, the name of the claimant, the name of the claim, the number of the survey, the mining district and county, and the names of adjoining and conflicting claims as shown by the plat survey.

§ 185.52 *Proof of posting on the claim.* After posting the said plat and notice upon the premises the claimant will file with the proper manager a copy of such plat and the field notes of survey of the claim, accompanied by the statement of at least two credible witnesses that such plat and notice are posted conspicuously upon the claim, giving the date and place of such posting, a copy of the notice so posted to be attached to and form a part of said statement.

§ 185.53 *Application for patent.* (a) At the time the proof of posting is filed, as required by § 185.53, the claimant must file an application for patent showing that he has the possessory right to the claim, in virtue of a compliance by him-

self (and by his grantors, if he claims by purchase) with the mining rules, regulations, and customs of the mining district, State, or Territory in which the claim lies, and with the mining laws of Congress, such statement to narrate briefly, but as clearly as possible, the facts constituting such compliance, the origin of his possession, and the basis of his claim to a patent. The application should contain a full description of the kind and character of the vein or lode and should state whether ore has been extracted therefrom; and if so, in what amount and of what value. It should also show the precise place within the limits of each of the locations embraced in the application where the vein or lode has been exposed or discovered and the width thereof. The showing in these regards should contain sufficient data to enable representatives of the Government to confirm the same by examination in the field and also enable the Bureau of Land Management to determine whether a valuable deposit of mineral actually exists within the limits of each of the locations embraced in the application."

(b) Every application for patent, based on a mining claim located after August 1, 1946, shall state whether the claimant has or has not had any direct or indirect part in the development of the atomic bomb project. The application must set forth in detail the exact nature of the claimant's participation in the project, and must also state whether as a result of such participation he acquired any confidential, official information as to the existence of deposits of uranium, thorium, or other fissionable source materials in the lands covered by his application.

CROSS REFERENCE: For definition of fissionable source materials, see Atomic Energy Commission's regulation, 10 CFR 40.2.

§ 185.54 *Evidence of title.* (a) Each patent application must be supported by either a certificate of title or an abstract of title certified to by the legal custodian of the records of locations and transfers of mining claims or by an abstractor of titles. The certificate of title or certificate to an abstract of title must be by a person, association, or corporation authorized by the State laws to execute

¹⁸ Blank forms of applications for mineral patents are not furnished by the Bureau of Land Management.

The application should be filed in duplicate. See 52 L. D. 193.

such a certificate and acceptable to the Bureau of Land Management.

(b) A certificate of title must conform substantially to Form 4-1246.

(c) Each certificate of title or abstract of title must be accompanied by single copies of the certificate or notice of the original location of each claim, and of the certificates of amended or supplemental locations thereof, certified to by the legal custodian of the record of mining locations.

(d) A certificate to an abstract of title must state that the abstract is a full, true, and complete abstract of the location certificate or notice, and all amendments thereof, and of all deeds, instruments, or actions appearing of record purporting to convey or to affect the title to each claim.

(e) The application for patent will be received and filed if the certificate of title or an abstract is brought down to a day reasonably near the date of the presentation of the application and shows full title in the applicant, who must as soon as practicable thereafter file a supplemental certificate of title or an abstract brought down so as to include the date of the filing of the application.

§ 185.55 *Evidence relating to destroyed or lost records.* In the event of the mining records in any case having been destroyed by fire or otherwise lost, a statement of the fact should be made, and secondary evidence of possessory title will be received, which may consist of the statement of the claimant, supported by those of any other parties cognizant of the facts relative to his location, occupancy, possession, improvements, etc.; and in such case of lost records, any deeds, certificates of location or purchase, or other evidence which may be in the claimant's possession and tend to establish his claim, should be filed.

§ 185.56 *Publication in newspaper.* Upon the receipt of applications for mineral patent and accompanying papers, if no reason appears for rejecting the application, the manager will, at the expense of the claimant (who must furnish the agreement of the publisher to hold applicant for patent alone responsible for charges of publication), publish a notice of such application for the period of 60 days in a newspaper published nearest to the claim. If the notice is

published in a daily paper, it shall be published in the Wednesday issue for nine consecutive weeks; if weekly, in nine consecutive issues; if semi-weekly or tri-weekly, in the issue of the same day of each week for nine consecutive weeks. In all cases the first day of issues shall be excluded in estimating the period of 60 days.

§ 185.57 *Contents of published notice.* The notices published as required by the preceding section must embrace all the data given in the notice posted upon the claim. In addition to such data the published notice must further indicate the locus of the claim by giving the connecting line, as shown by the field notes and plat, between a corner of the claim and a United States mineral monument or a corner of the public survey, and thence the boundaries of the claim by courses and distances.

§ 185.58 *Manager to designate newspaper.* The manager shall have the notice of application for patent published in a paper of established character and general circulation, to be by him designated as being the newspaper published nearest the land.

§ 185.59 *Proof by applicant of publication and posting.* After the 60-day period of newspaper publication has expired, the claimant will furnish from the office of publication a sworn statement that the notice was published for the statutory period, giving the first and last day of such publication, and his own statement showing that the plat and notice aforesaid remained conspicuously posted upon the claim sought to be patented during said 60-day publication, giving the dates.

§ 185.60 *Payment of purchase price and statement of charges and fees.* Upon the filing of the statement required by the preceding section, the manager will, if no adverse claim was filed in his office during the period of publication, and no other objection appears, permit the claimant to pay for the land to which he is entitled at the rate of \$5 for each acre and \$5 for each fractional part of an acre, except as otherwise provided by law, issuing the usual receipt therefor. The claimant will also make a statement of all charges and fees paid by him for publication and surveys, together with all fees and money paid the manager of the land office, and a patent shall be issued thereon if found regular.

§ 185.61 *Trustee to disclose nature of trust.* Any party applying for patent as trustee must disclose fully the nature of the trust and the name of the cestui que trust; and such trustee, as well as the beneficiaries, must furnish satisfactory proof of citizenship; and the names of the beneficiaries, as well as that of the trustee, must be inserted in the final certificate of entry.

§ 185.62 *Allowance of entry; transfers subsequent to application not recognized.* No entry will be allowed until the manager has satisfied himself, by careful examination, that proper proofs have been filed upon the points indicated in the law and official regulations.¹⁹ Transfers made subsequent to the filing of the application for patent will not be considered, but entry will be allowed and patent issued in all cases in the name of the applicant for patent, the title conveyed by the patent, of course, in each instance inuring to the transferee of such applicant where a transfer has been made pending the application for patent.

§ 185.63 *Failure to prosecute application with diligence.* The failure of an applicant for patent to a mining claim to prosecute his application to completion, by filing the necessary proofs and making payment for the land, within a reasonable time after the expiration of the period of publication of notice of the application, or after the termination of adverse proceedings in the courts, constitutes a waiver by the applicant of all rights obtained by the earlier proceedings upon the application.

§ 185.64 *Resumption of patent proceedings after suspension due to adverse claim or protest.* The proceedings necessary to the completion of an application for patent to a mining claim, against which an adverse claim or protest has been filed, if taken by the applicant at the first opportunity afforded therefor under the law and departmental practice, will be as effective as if taken at the date when, but for the adverse claim or protest, the proceedings on the application could have been completed.

¹⁹ If the proof is found regular, certificate should issue even though a protest may have been filed but the claimant should be advised that patent will be withheld by the Bureau of Land Management pending a report by the authorized officer upon the bona fides of the claim.

MILL SITES

§ 185.65 *Application for patent.* (a) Land entered as a mill site must be shown to be nonmineral. Mill sites are simply auxiliary to the working of mineral claims. Section 2337 of the Revised Statutes (30 U. S. C. 42) provides for the patenting of mill sites.

(b) To avail themselves of this provision of law, parties holding the possessory right to a vein or lode claim, and to a piece of nonmineral land not contiguous thereto for mining or milling purposes, not exceeding the quantity allowed for such purpose by section 2337, or prior laws, under which the land was appropriated, the proprietors of such vein or lode may file in the proper land office their application for a patent, which application, together with the plat and field notes, may include, embrace, and describe, in addition to the vein or lode claim, such noncontiguous mill site, and after due proceedings as to notice, etc., a patent will be issued conveying the same as one claim. The owner of a patented lode may, by an independent application, secure a mill site, if good faith is manifest in its use or occupation in connection with the lode and no adverse claim exists.

§ 185.66 *Mill sites applied for in conjunction with a lode claim.* Where the original survey includes a lode claim and also a mill site the lode claim should be described in the plat and field notes as "Sur. No. 37, A," and the mill site as "Sur. No. 37, B," or whatever may be its appropriate numerical designation; the course and distance from a corner of the mill site to a corner of the lode claim to be invariably given in such plat and field notes, and a copy of the plat and notice of application for patent must be conspicuously posted upon the mill site as well as upon the vein or lode claim for the statutory period of 60 days. In making the entry no separate receipt or certificate need be issued for the mill site, but the whole area of both lode and mill site will be embraced in one entry, the price being \$5 for each acre and fractional part of an acre embraced by such lode and mill site claim.

§ 185.67 *Mill sites for quartz mills or reduction works.* In case the owner of a quartz mill or reduction works is not the owner or claimant of a vein or lode claim the law permits him to make application therefor in the same manner prescribed

for mining claims, and after due notice and proceedings, in the absence of a valid adverse filing, to enter and receive a patent for his mill site at the price named in the preceding section.

§ 185.68 *Proof of nonmineral character.* In every case there must be satisfactory proof that the land claimed as a mill site is not mineral in character, which proof may, where the matter is unquestioned, consist of the statement of two or more persons capable, from acquaintance with the land to testify understandingly.

PLACERS

§ 185.69 *Application for patent.* (a) The proceedings to obtain patents for placer claims, including all forms of mineral deposits excepting veins of quartz or other rock in place, are similar to the proceedings prescribed for obtaining patents for vein or lode claims; but where a placer claim shall be upon surveyed lands, and conforms to legal subdivisions, no further survey or plat will be required. Where placer claims cannot be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands.

(b) The price of placer claims is fixed at \$2.50 per acre or fractional part of an acre.

CROSS REFERENCE: For patents, generally, see Part 108 of this chapter.

§ 185.70 *Proof of improvements for patent.* The proof of improvements must show their value to be not less than \$500 and that they were made by the applicant for patent or his grantors. This proof should consist of the statement of two or more disinterested witnesses.

§ 185.71 *Data to be filed in support of application.* (a) In placer applications, in addition to the recitals necessary in and to both vein or lode and placer applications, the placer application should contain, in detail, such data as will support the claim that the land applied for is placer ground containing valuable mineral deposits not in vein or lode formation and that title is sought not to control water courses or to obtain valuable timber but in good faith because of the mineral therein. This statement, of course, must depend upon the character of the deposit and the natural features of the ground, but the following details should be covered as fully as possible: If the claim be for a deposit of placer

gold, there must be stated the yield per pan, or cubic yard, as shown by prospecting and development work, distance to bedrock, formation and extent of the deposit, and all other facts upon which he bases his allegation that the claim is valuable for its deposits of placer gold. If it be a building stone or other deposit than gold claimed under the placer laws, he must describe fully the kind, nature, and extent of the deposit, stating the reasons why same is by him regarded as a valuable mineral claim. He will also be required to describe fully the natural features of the claim; streams, if any, must be fully described as to their course, amount of water carried, fall within the claim; and he must state kind and amount of timber and other vegetation thereon and adaptability to mining or other uses.

(b) If the claim be all placer ground, that fact must be stated in the application and corroborated by accompanying proofs; if of mixed placers and lodes, it should be so set out, with a description of all known lodes situated within the boundaries of the claim. A specific declaration, such as is required by section 2333, Revised Statutes (30 U. S. C. 37) must be furnished as to each lode intended to be claimed. All other known lodes are, by the silence of the applicant, excluded by law from all claim by him, of whatsoever nature, possessory or otherwise.

(c) While these data are required as a part of the mineral surveyor's report in case of placers taken by special survey, it is proper that the application for patent incorporate these facts.

(d) Inasmuch as in case of claims taken by legal subdivisions, no report by a mineral surveyor is required, the claimant, in his application in addition to the data above required, should describe in detail the shafts, cuts, tunnels, or other workings claimed as improvements, giving their dimensions, value, and the course and distance thereof to the nearest corner of the public surveys.

(e) The statement as to the description and value of the improvements must be corroborated by the statements of two disinterested witnesses.³⁰

(f) Applications awaiting entry, whether published or not, must be made to conform to this part, with respect to proof as to the character of the land.

³⁰ The proof showing must be made in duplicate. See 51 L. D. 265 and 52 L. D. 190.

Entries already made will be suspended for such additional proofs as may be deemed necessary in each case.

§ 185.72 *Applications for placers containing known lodes.* Applicants for patent to a placer claim, who are also in possession of a known vein or lode included therein, must state in their application that the placer includes such vein or lode. The published and posted notices must also include such statement. If veins or lodes lying within a placer location are owned by other parties, the fact should be distinctly stated in the application for patent and in all the notices. But in all cases whether the lode is claimed or excluded, it must be surveyed and marked upon the plat, the field notes and plat giving the area of the lode claim or claims and the area of the placer separately. An application which omits to claim such known vein or lode must be construed as a conclusive declaration that the application has no right of possession to the vein or lode. Where there is no known lode or vein, the fact must appear by the statement of two or more witnesses.

SUBPART E—GENERAL

AUTHORITY: §§ 185.73 to 185.100 issued under R. S. 2478; 43 U. S. C. 1201.

CITIZENSHIP

§ 185.73 *Citizenship of corporations and of associations acting through agents.* The proof necessary to establish the citizenship of applicants for mining patents must be made in the following manner: In case of an incorporated company, a certified copy of its charter or certificate of incorporation must be filed. In case of an association of persons unincorporated, the statement of their duly authorized agent, made upon his own knowledge or upon information and belief, setting forth the residence of each person forming such association, must be submitted. This statement must be accompanied by a power of attorney from the parties forming such association, authorizing the person who makes the citizenship showing to act for them in the matter of their application for patent.

§ 185.74 *Citizenship of individuals.* (a) In case of an individual or an association of individuals who do not appear by their duly authorized agent, the statement of each applicant, showing whether he is a native or naturalized citizen,

when and where born, and his residence, will be required.

(b) In case an applicant has declared his intention to become a citizen or has been naturalized, his statement must show the date, place, and the court before which he declared his intention, or from which his certificate of citizenship issued, and present residence.

POSSESSORY RIGHT

§ 185.75 *Right by occupancy.* (a) The provisions of section 2332, Revised Statutes (30 U. S. C. 38), greatly lessen the burden of proof, more especially in the case of old claims located many years since, the records of which, in many cases, have been destroyed by fire, or lost in other ways during the lapse of time, but concerning the possessory right to which all controversy or litigation has long been settled.

(b) When an applicant desires to make his proof of possessory right in accordance with this provision of law, he will not be required to produce evidence of location, copies of conveyances, or abstracts of title, as in other cases, but will be required to furnish a duly certified copy of the statute of limitation of mining claims for the State or Territory, together with his statement giving a clear and succinct narration of the facts as to the origin of his title, and likewise as to the continuation of his possession of the mining ground covered by his application; the area thereof; the nature and extent of the mining that has been done thereon; whether there has been any opposition to his possession, or litigation with regard to his claim, and if so, when the same ceased; whether such cessation was caused by compromise or by judicial decree, and any additional facts within the claimant's knowledge having a direct bearing upon his possession and bona fides which he may desire to submit in support of his claim.

§ 185.76 *Certificate of court required.* There should likewise be filed a certificate, under seal of the court having jurisdiction of mining cases within the judicial district embracing the claim, that no suit or action of any character whatever involving the right of possession to any portion of the claim applied for is pending, and that there has been no litigation before said court affecting the title to said claim or any part thereof for a period equal to the time fixed by the statute of limitations for mining claims in the State or Territory as afore-

said other than that which has been finally decided in favor of the claimant.

§ 185.77 *Corroborative proof required.* The claimant should support his narrative of facts relative to his possession, occupancy, and improvements by corroborative testimony of any disinterested person or persons of credibility who may be cognizant of the facts in the case and are capable of testifying understandingly in the premises.

ADVERSE CLAIMS

§ 185.78 *Filing of claim.* (a) An adverse claim must be filed with the manager of the land office where the application for patent is filed or with the manager of the district in which the land is situated at the time of filing the adverse claim. The claim may be filed by the adverse claimant, or by his duly authorized agent or attorney in fact cognizant of the facts stated.

(b) Where an agent or attorney in fact files the adverse claim he must furnish proof that he is such agent or attorney.

(c) The agent or attorney in fact must sign the statement of the adverse claim within the land district where the claim is situated, stating that it was so signed.

§ 185.79 *Statement of claim.* (a) The adverse claim must fully set forth the nature and extent of the interference or conflict; whether the adverse party claims as a purchaser for valuable consideration or as a locator. If the former, a certified copy of the original location, the original conveyance, a duly certified copy thereof, or an abstract of title from the office of the proper recorder should be furnished, or if the transaction was a merely verbal one he will narrate the circumstances attending the purchase, the date thereof, and the amount paid; which facts should be supported by the statement of one or more witnesses, if any were present at the time, and if he claims as a locator he must file a duly certified copy of the location from the office of the proper recorder.

(b) In order that the "boundaries" and "extent" of the claim may be shown, it will be incumbent upon the adverse claimant to file a plat showing his entire claim, its relative situation or position with the one against which he claims, and the extent of the conflict: Provided, however, That if the application for patent describes the claim by legal subdivisions, the adverse claimant, if also

claiming by legal subdivisions, may describe his adverse claim in the same manner without further survey or plat. If the claim is not described by legal subdivisions it will generally be more satisfactory if the plat thereof is made from an actual survey by a mineral surveyor and its correctness officially certified thereon by him.

§ 185.80 *Action by manager.* Upon the adverse claim being filed within the 60-day period of publication, the manager will immediately give notice in writing to the parties that such adverse claim has been filed, informing them that the party who filed the adverse claim will be required within 30 days from the date of such filing to commence proceedings in a court of competent jurisdiction to determine the question of right of possession, and to prosecute the same with reasonable diligence to final judgment, and that, should such adverse claimant fail to do so, his adverse claim will be considered waived and the application for patent be allowed to proceed upon its merits.

§ 185.81 *Patent proceedings stayed when adverse claim is filed; exception.* When an adverse claim is filed as aforesaid, the manager will endorse upon the same the precise date of filing and preserve a record of the date of notifications issued thereon; and thereafter all proceedings on the application for patent will be stayed with the exception of the completion of the publication and posting of notices and plat and the filing of the necessary proof thereof, until the controversy shall have been finally adjudicated in court or the adverse claim waived or withdrawn.

§ 185.82 *Termination of adverse suit.* (a) Where an adverse claim has been filed and suit thereon commenced within the statutory period and final judgment rendered determining the right of possession, it will not be sufficient to file with the manager a certificate of the clerk of the court setting forth the facts as to such judgment, but the successful party must, before he is allowed to make entry, file a certified copy of the judgment roll, together with the other evidence required by section 2326, Revised Statutes (30 U. S. C. 30), and a certificate of the clerk of the court under the seal of the court showing, in accord with the record facts of the case, that the judgment mentioned and described in the

judgment roll aforesaid is a final judgment; that the time for appeal therefrom has, under the law, expired and that no such appeal has been filed, or that the defeated party has waived his right to appeal. Other evidence showing such waiver or an abandonment of the litigation may be filed.

(b) Where such suit has been dismissed, a certificate of the clerk of the court to that effect or a certified copy of the order of dismissal will be sufficient.

(c) After an adverse claim has been filed and suit commenced, a relinquishment or other evidence of abandonment of the adverse claim will not be accepted, but the case must be terminated and proof thereof furnished as required by the last two paragraphs.

§ 185.83 *Certificate required when no suit commenced.* Where an adverse claim has been filed but no suit commenced against the applicant for patent within the statutory period, a certificate to that effect by the clerk of the State court having jurisdiction in the case, and also by the clerk of the district court of the United States for the district in which the claim is situated, will be required.

FEES

§ 185.84 *Fees.* The fee payable to the Bureau of Land Management for filing and acting upon applications for mineral-land patents is \$10, to be paid by the applicant for patent at the time of filing, and the like sum is payable by an adverse claimant at the time of filing his adverse claim.

CHARGES FOR NEWSPAPER PUBLICATION

§ 185.85 *Charges not to exceed legal rates.* (a) The charge for the publication of notice of application for patent in a mining case in all districts, exclusive of Alaska, shall not exceed the legal rates allowed by the laws of the several States wherein the notice is published, and in no case shall the charge exceed \$7.50 for each 10 lines of space occupied. Such charge shall be accepted as full payment for the publication for the entire period required by law.

(b) It is expected that these notices shall not be so abbreviated as to curtail the description essential to a perfect notice, and on the other hand that they shall not be of unnecessary length. The printed matter must be set solid without paragraphing or any display in the head-

ing and shall be in the usual body type used in legal notices. If other type is used, no allowance will be made for additional space on that account. The number of solid lines only used in advertising by actual count will be allowed. All abbreviations and copy must be strictly followed. The following is a sample of advertisement set up in accordance with Government requirements and contains all the essential data necessary for publication:

M. A. No. 04421, U. S. Land Office, Elko, Nevada, October 5, 1921. Notice is hereby given that the Jarbidge Buhl Mining Company by W. H. Hudson, attorney in fact, of Jarbidge, Nevada, has made application for patent to the Altitude, Altitude No. 1, Altitude No. 3, and Altitude Annex, lode mining claims, Survey No. 4470, in unsurveyed T. 46 N., R. 58 E., M. D. B. and M., in the Jarbidge mining district, Elko County, Nevada, described as follows: Beginning at corner No. 1, Altitude No. 3, whence the quarter corner of the south boundary of sec. 34, T. 46 N., R. 58 E., M. D. B. and M., bears south 41°54' west 7285.63 feet, thence north 20°14' west 1590 feet to corner No. 2 of said lode; thence north 69°46' east 569 feet to corner No. 3 of said lode; thence south 20°14' east 417.5 feet to corner 2, Altitude No. 1; thence north 69°46' east 1806.1 feet to corner No. 3, Altitude lode; thence south 20°14' east 1500 feet, to corner No. 4 of said lode; thence south 69°46' west 1806.1 feet, to corner No. 1, Altitude No. 1 lode; thence north 20°14' west 417.5 feet to corner No. 4, Altitude No. 3; thence south 69°46' west 569 feet to point of beginning. There are no adjoining or conflicting claims. The location notices are recorded in Book 17, pages 373 and 374, and in Book 15, pages 52 and 53, mining locations, Elko County, Nevada, John E. Robbins, Manager.

(c) For the publication of citations in contests or hearings, involving the character of lands, the charges may not exceed the rates provided for similar notices by the law of the State, and shall not exceed \$12 for five publications in a weekly newspaper, or \$15 for publication in a daily newspaper for 30 days. Such charge shall be accepted as full payment for all the matter so published and for the full period required.

PROTESTS, CONTESTS, CONFLICTS, AND SEGREGATIONS

§ 185.86 *Protest against mineral applications.* At any time prior to the issuance of patent, protest may be filed against the patenting of the claim as applied for, upon any ground tending to show that the applicant has failed to comply with the law in any matter essen-

tial to a valid entry under the patent proceedings. Such protest cannot, however, be made the means of preserving a surface conflict lost by failure to adverse or lost by the judgment of the court in an adverse suit. One holding a present joint interest in a mineral location included in an application for patent who is excluded from the application, so that his interest would not be protected by the issue of patent thereon, may protest against the issuance of a patent as applied for, setting forth in such protest the nature and extent of his interest in such location, and such a protestant will be deemed a party in interest entitled to appeal. This results from the holding that a co-owner excluded from an application for patent does not have an "adverse" claim within the meaning of sections 2325 and 2326 of the Revised Statutes (30 U. S. C. 29, 30), (See *Turner v. Sawyer*, 150 U. S. 578-586, 37 L. ed. 1189-1191.)

§ 185.87 *Procedure in contest cases.* The Rules of Practice, Part 221 of this chapter, in cases before the United States, the Bureau of Land Management, and the Department of the Interior will, so far as applicable, govern in all cases and proceedings arising in contests and hearings to determine the character of lands.

§ 185.88 *Presumption as to land returned as mineral.* Public land returned upon the survey records as mineral shall be withheld from entry as agricultural land until the presumption arising from such a return shall be overcome.

§ 185.89 *Procedure to dispute record character of land.* (a) When lands returned as mineral are sought to be entered as agricultural under laws which require the submission of final proof after due notice by publication and posting, the filing of the proper nonmineral statement in the absence of allegations that the land is mineral will be deemed sufficient as a preliminary requirement. A satisfactory showing as to character of land must be made when final proof is submitted.

(b) In case of application to enter, locate, or select such lands as agricultural, under laws in which the submission of final proof after due publication and posting is not required, notice thereof must first be given by publication for 60 days and posting in the local office during the same period, and affirmative proof as to the character of the land submitted. In the absence of allegations

that the land is mineral, and upon compliance with this requirement, the entry, location, or selection will be allowed, if otherwise regular.

(c) Where as against the claimed right to enter such lands as agricultural it is alleged that the same are mineral, or are applied for as mineral lands, the proceedings in this class of cases will be in the nature of a contest, and the practice will be governed by the rules in force in contest cases.

§ 185.90 *Testimony at hearings to determine character of lands.* (a) At hearings to determine the character of lands the claimants and witnesses will be thoroughly examined with regard to the character of the land; whether the same has been thoroughly prospected; whether or not there exists within the tract or tracts claimed any lode or vein of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, or copper, or other valuable deposit which has ever been claimed, located, recorded, or worked; whether such work is entirely abandoned, or whether occasionally resumed; if such lode does exist, by whom claimed, under what designation, and in which subdivision of the land it lies; whether any placer mine or mines exist upon the land; if so, what is the character thereof, whether of the shallow-surface description, or of the deep cement, blue lead, or gravel deposits; to what extent mining is carried on when water can be obtained, and what the facilities are for obtaining water for mining purposes; upon what particular 10-acre subdivisions mining has been done, and at what time the land was abandoned for mining purposes, if abandoned at all. In every case, where practicable, an adequate quantity or number of representative samples of the alleged mineral-bearing matter or material should be offered in evidence, with proper identification, to be considered in connection with the record, with which they will be transmitted upon each appeal that may be taken. Testimony may be submitted as to the geological formation and development of mineral on adjoining or adjacent lands and their relevancy.

(b) The testimony should also show the agricultural capacities of the land, what kind of crops are raised thereon, the value thereof; the number of acres actually cultivated for crops of cereals or vegetables, and within which particular 10-acre subdivision such crops are raised; also which of these subdivisions

embrace the improvements, giving in detail the extent and value of the improvements, such as house, barn, vineyard, orchard, fencing, etc., and mining improvements.

(c) The testimony should be as full and complete as possible; and in addition to the leading points indicated above, where an attempt is made to prove the mineral character of lands which have been entered under the agricultural laws, it should show at what date, if at all, valuable deposits of minerals were first known to exist on the lands.

§ 185.91 *Segregation of mineral from nonmineral land.* Where a survey is necessary to set apart mineral from nonmineral land, the appropriate authorized officer will have special instructions prepared outlining the procedure to be followed in the required survey. The survey will be executed at the expense of the United States.²¹

§ 185.92 *Effect of decision that land is mineral.* The fact that a certain tract of land is decided upon testimony to be mineral in character is by no means equivalent to an award of the land to a miner. In order to secure a patent for such land, he must proceed as in other cases, in accordance with this part.

§ 185.93 *Nonmineral entry of residue of subdivisions invaded by mining claims.* (a) The manager will accept and approve any application (if otherwise regular), to make a nonmineral entry of the residue of any original lot or legal subdivision which is invaded by mining claims if the tract has already been lotted to exclude such claims. If not so lotted, and if the original lot or legal subdivision is invaded by patented mining claims, or by mining claims covered by pending applications for patent which the nonmineral applicant does not desire to contest, or by approved mining claims of established mineral character, the manager will accept and approve the application (if otherwise regular), exclusive of the conflict with the mining claims.

²¹ Where, in stock-raising homestead entries, it has been satisfactorily established that there are existent prior unpatented mining claims, the segregation of the latter is not strictly a segregation of mineral from nonmineral land, but rather the procedure adopted to define the boundaries of and provide a legal description for that part of the homestead entry which is not within the segregated mining claims.

(b) The manager will allow no non-mineral application for any portion of an original lot or 40-acre legal subdivision, where the tract has not been lotted to show the reduced area by reason of approved surveys of mining claims for which applications for patent have not been filed, until the nonmineral applicant submits a satisfactory showing that such surveyed claims are in fact mineral in character. Applications to have lands which are asserted to be mineral, or mining locations, segregated by survey with a view to the nonmineral appropriation of the remainder, will be made to the manager of the land office. Such applications must be supported by a written statement of the party in interest, duly corroborated by two or more disinterested persons, or by such other or further evidence as may be required, that the land sought to be segregated as mineral is in fact mineral in character.

TEMPORARY DEFERMENT OF ASSESSMENT WORK UNDER CERTAIN CONDITIONS

§ 185.94 *Statutory authority.* The act of June 21, 1949 (63 Stat. 214; 30 U. S. C. Sup. 28b-e), provides for the temporary deferment in certain unavoidable contingencies of the performance of annual assessment work on mining claims held by location in the United States. The relief under this act is in addition to any other relief available under any other act of Congress with respect to the suspension of annual assessment work on mining claims.

§ 185.95 *Conditions under which deferment may be granted.* The deferment may be granted where any mining claim or group of claims in the United States is surrounded by lands over which a right-of-way for the performance of assessment work has been denied or is in litigation or is in the process of acquisition under State law or where other legal impediments exist which affect the right of the claimant to enter upon the surface of such claim or group of claims or to gain access to the boundaries thereof.

§ 185.96 *Filing of petition for deferment, contents.* (a) In order to obtain temporary deferment, the claimant must file with the manager of the land office for the district in which the lands are situated or with the area administrator for the State if there is no land office in the State, a petition in duplicate requesting such deferment. No particular form of petition is required, but the ap-

plicant must attach to one copy thereof a copy of the notice to the public required by the act which shows that it has been filed or recorded in the office in which the notices or certificates of location were filed or recorded. The petition and duplicate should be signed by at least one of the owners of each of the locations involved, shall give the names of the claims, dates of location, and the date of the beginning of the one year period for which deferment is requested.

(b) If the petition is based upon the denial of a right-of-way, it must state the nature and ownership of the land or claim thereto over which it is necessary to obtain a right-of-way in order to reach the surrounded claims, and the land description thereof by legal subdivisions if the land is surveyed, and give full details as to why present use of the right-of-way is denied or prevented and as to the steps which have been taken to acquire the right to use it. The petition should state whether any other right-of-way is available and if so, give reasons why it is not feasible or desirable to use that right-of-way.

(c) If the petition is based on other legal impediments, they must be set out and their effect described in detail.

§ 185.97 *Notice of action on petition to be recorded.* The claimant must file or record, in the office in which he filed or recorded his notice of petition, a copy of the order or decision disposing of the petition.

§ 185.98 *Period for which deferment may be granted.* If the showing made is satisfactory, the authorized officer of the Bureau of Land Management will grant a deferment for an initial period not exceeding one year. The period shall begin on the date requested in the petition unless the approval sets a different date.

Upon petition, the one year period may be renewed for another year if justifiable conditions exist. If the conditions justifying deferment are removed prior to the specified termination date of the deferment period, the deferment shall automatically be ended as of such earlier date.

§ 185.99 *When deferred assessment work is to be done.* All deferred assessment work may be begun at any time after the termination of the deferment but must be completed not later than the end of the assessment year commencing after the removal or cessation of the causes for the deferments granted under the act and shall be in addition to the annual assessment work required by law for such years.

PATENTS FOR MINING CLAIMS

§ 185.100 *Land descriptions in patents.* The land description in a patent for a lode mining claim, for a millsite, or for a placer claim not consisting of legal subdivisions, shall hereafter consist of the names and survey numbers of the claims being patented and those being excluded, or of the names of the excluded claims if they are unsurveyed, or of the legal subdivisions of excluded land covered by homestead or other nonmineral entry. The land description shall refer to the field notes of survey and the plat thereof for a more particular description and the patent shall expressly make them a part thereof. Where shown by the mineral entry the patent shall give the actual or approximate legal subdivision, section, township and range, the name of the county and of the mining district, if any, wherein the claims are situated. A copy of the plat and field notes of each mineral survey patented will be furnished to the patentee.

**TITLE 43—PUBLIC LANDS:
INTERIOR**

**Chapter I—Bureau of Land Management,
Department of the Interior**

[Circular 1942]

PART 192—OIL AND GAS LEASES

**EXTENSION FOR TERMS OF COOPERATIVE OR
UNIT PLAN**

Paragraph (c) of § 192.122 is amended
to read as follows:

§ 192.122 *Extension for terms of cooperative or unit plan.* * * *

(c) Any lease committed after July 29, 1954 to such a plan, which covers lands within and lands outside the area covered by the plan, shall be segregated, as of the effective date of unitization, into separate leases; one covering the lands committed to the plan and the other the lands not so committed. The segregated lease covering the nonunitized portion of the lands, shall continue in force and effect for the term thereof but for not less than two years from the date of segregation, and so long thereafter as oil or gas is produced in paying quantities.

(Sec. 32, 41 Stat. 450; 30 U. S. C. 189)

DOUGLAS MCKAY,
Secretary of the Interior.

NOVEMBER 9, 1955.

[F. R. Doc. 55-9208; Filed, Nov. 15, 1955;
8:49 a. m.]

**Bureau of Land Management
Land Office
Billings, Montana
DEC 2 1955**

Rec'd

Published in 20 F. R. November 16, 1955

Copies to	Each AA	25	BFS	10	
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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1943]

PART 255—TOWN SITES

MISCELLANEOUS AMENDMENTS

Sections 255.9, 255.10, 255.11, and 255.15, are amended to read as follows:

§ 255.9 *Town site settlement.* Section 2382 of the Revised Statutes, as amended by the act of August 24, 1954 (68 Stat. 792) and sections 2383, 2384, and 2386 of the Revised Statutes (43 U. S. C. 713-715, 717), authorize the platting of town sites by or for the occupants and the disposal of such town sites, where town site settlement has been or may be made upon unreserved public lands subject to such settlement. Public lands withdrawn or reserved by Executive Order No. 6910 of November 26, 1934, or 6964 of February 5, 1935, are not subject to occupation for town site purposes unless first classified for such occupation, pursuant to Part 296 of this chapter.

§ 255.10 *Filing with county recorder of plat, field notes, and statement of improvements.* (a) The occupants, at their own expense, must cause a survey of the land into lots, blocks, streets, and alleys to be made, and the plat and field notes thereof to be filed with the recorder of the county in which the land is situated. The plat must show (1) that the land does not include an area in excess of 640 acres; (2) that the boundaries of the land are correctly shown and described thereon according to the lines of the public surveys, or if not so surveyed, then that the exterior lines of

the townsite survey are tied to a designated, permanent, and thoroughly identified monument; (3) that the streets, blocks, lots, and alleys, the dimensions of the same, with measurements, courses, and area of each municipal subdivision, and the name of the town, are correctly delineated thereon; and (4) the exterior lines of all existing railroad rights-of-way and station grounds. The lots shall conform in size to local ordinances or accepted local standards for subdivision platting, or in the absence of such ordinances or standards, to standards prescribed by the authorized official of the Bureau of Land Management. The above-required facts should be embodied in the statement of the surveyor entered upon the margin of the plat.

(b) A statement of the extent and general character of the improvements on the land must be filed with the plat and field notes, and over the signature of the party acting for and on behalf of the occupants of the land.

§ 255.11 *Filing in land office, in duplicate, of transcript of plat, field notes, and statement.* Within one month after filing such plat, field notes, and statement, a transcript thereof in duplicate, each copy duly verified by the certificate of the county recorder, and accompanied by the statement of the two persons that such town has been established in good faith, and showing the number of inhabitants thereof and when it was so established, shall be filed with the manager of the land office having jurisdiction over the land district in which the town site is located.

§ 255.15 *Minimum price of lots.* The minimum price for all lots is \$10 per lot, except in cases where the survey into lots and blocks is made by the Government, in which case the minimum price is \$15 per lot.

(R. S. 2478; 43 U. S. C. 1201. Interpret or apply 68 Stat. 792; 43 U. S. C. 713)

DOUGLAS McKAY,
Secretary of the Interior.

NOVEMBER 18, 1955.

[F. R. Doc. 55-9469; Filed, Nov. 25, 1955; 8:46 a. m.]

*18 U. S. C. 1001 makes it a crime for any person knowingly and wilfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

Published in 20 F. R. November 26, 1955

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FILE 42-100000-100000
PARTIAL

Chapter 1 - General Information
General Information of the Project

Part 1 - General Information

General Information of the Project
This section contains general information about the project, including the project name, location, and purpose.

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Part 2 - Project Description

1.0	Project Name	1.0	Project Name
2.0	Project Location	2.0	Project Location
3.0	Project Purpose	3.0	Project Purpose
4.0	Project Scope	4.0	Project Scope
5.0	Project Objectives	5.0	Project Objectives
6.0	Project Stakeholders	6.0	Project Stakeholders
7.0	Project Risks	7.0	Project Risks
8.0	Project Budget	8.0	Project Budget
9.0	Project Timeline	9.0	Project Timeline
10.0	Project Summary	10.0	Project Summary

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

(Circular 1944)

Part 170—National Forest Homesteads

- Sec.
170.1 Statutory authority.
170.2 Examination, classification, and listing of lands for settlement and entry.
170.3 Classification directed; request for classification.
170.4 Classification notice to be posted and published.
170.5 Payment for publication of classification notice.
170.6 Preference-right claimants.
170.7 Survey required before proof.
170.8 Metes-and-bounds surveys authorized.
170.9 Application for survey; posting on land of copy of approved plat.
170.10 Commutation not allowed; requirements for proof.
170.11 Requirements as to posting of final proof notice, field notes and plats, where homestead entry survey is made.
170.12 Description of land by metes and bounds not required in proof notices.
170.13 National forest homesteads in southern California and in the Black Hills National Forest.
170.14 Classification and listing for homestead entry of land in Custer National Forest.
170.15 Conditions governing homestead settlements.
170.16 Claims initiated prior to establishment of forest protected.

AUTHORITY: §§ 170.1 to 170.16 issued under R. S. 2478; 43 U. S. C. 1201.

SOURCE: §§ 170.1 to 170.16 appear at 19 F. R. 8982, Dec. 23, 1954.

CROSS REFERENCES: For enlarged homesteads, see Part 167 of this chapter. For exchanges for the consolidation or extension of national forests, see Part 148 of this chapter. For forest lieu selections, see footnote to Part 130 of this chapter. For general orders of withdrawal, effect of, see footnote to Part 295 of this chapter. For Indian allotments in national forests, see § 176.15 of this chapter. For Kinkaid homesteads, see part 169 of this chapter. For national forest homesteads, Alaska, see § 65.28 of this chapter. For national forests, see Part 205 of this

chapter. For original, additional, second, and adjoining farm homesteads under the general provisions of the homestead laws, see Part 166 of this chapter. For stock-raising homesteads, see Part 168 of this chapter. For national forest regulations of the Forest Service, Department of Agriculture, see Parks, Forests and Memorials, 36 CFR 211.

§ 170.1 *Statutory authority.* The act of June 11, 1906 (34 Stat. 233; 16 U. S. C. 506-509), authorizes homestead entries for lands within national forests.

§ 170.2 *Examination, classification, and listing of lands for settlement and entry.* Both surveyed and unsurveyed lands within national forests which are chiefly valuable for agriculture and not needed for public use may, from time to time, be examined, classified, and listed under the supervision of the Secretary of Agriculture, and lists thereof will be filed by him with the Bureau of Land Management. The Bureau of Land Management will then declare the listed lands subject to settlement and entry.

§ 170.3 *Classification directed; request for classification.* By an act approved August 10, 1912 (37 Stat. 287; 16 U. S. C. 506), the Secretary of Agriculture was directed to select, classify, and segregate all lands within the boundaries of national forests that may be opened to entry under the homestead laws applicable thereto. Any person interested in securing a classification or review of a classification previously made by the Secretary of Agriculture should present his request to the supervisor of the national forest in which the land is located, and should state the reasons which he may have for believing the land has not been properly classified.

§ 170.4 *Classification notice to be posted and published.* When any lands have been declared subject to settlement and entry under the act of June 11, 1906, a list of such lands, together with a copy of the notice of restoration thereof to entry and authority for publication of

such notice, will be transmitted to the manager for the district within which the lands are located. Upon receipt thereof the manager will designate a newspaper published within the county in which the land is situated and transmit to the publishers thereof the letter of authority and copy of notice of restoration, said notice to be published in the designated newspaper once each week for 4 successive weeks. The manager will also post in his office a copy of said notice, the same to remain posted for a period of 60 days immediately preceding the date when the lands are to be subject to entry. If no paper is published within the county, publication should be made in a newspaper published nearest the land.

§ 170.5 *Payment for publication of classification notice.* The cost of publishing the notice mentioned in the preceding section will not be paid by the manager, but the publisher's vouchers therefor, in duplicate, should be forwarded to the proper authorized officer, by the publisher, accompanied by a duly executed proof of publication.

§ 170.6 *Preference-right claimants.* (a) Any person qualified to make a homestead entry who, prior to January 1, 1906, occupied and in good faith claimed any lands listed under the Act of June 11, 1906, for agricultural purposes, and who has not abandoned the same and the person upon whose application such land was listed, has, each in the order named, the preferred right to enter the lands so settled upon or listed at any time within 60 days prior to restoration of the land. Should an application be filed by such settler during the 60-day period the manager will, upon his showing by a signed statement the fact of such settlement and continued occupancy, allow the entry. If an application is filed during the said period by the party upon whose request the lands were listed, the manager will retain said application on file in his office until the

REPRINT DECEMBER 1, 1955
Part 170, Title 43 CFR

Copies to	Each AA	25	BFS	10
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date of restoration or until an entry has been made by a claimant having the superior preference right. If no application by a bona fide settler prior to January 1, 1906, is filed within the preference-right period the manager will allow the application of the party upon whose request the lands were listed. If entry by a person claiming a settler's preference right is allowed, other applications should be rejected without waiting the expiration of the preferred period. Of the applicants for listing, only the one upon whose request a tract is listed secures any preference right. Other applicants for the listing of the same tract acquire no right by virtue of such applications.

(b) All applications by others than the classes above referred to, which are filed prior to the date of opening, should be rejected forthwith notwithstanding the fact that an attempted transfer of the preference right of entry may have been made. The terms and conditions under which applications may be filed by veterans of World War II and of the Korean conflict and by the general public will be set forth in the order of restoration.

CROSS REFERENCE: For restorations, see Part 205 of this chapter. For preference rights accorded to veterans of World War II and of the Korean conflict, see Part 181 of this chapter.

§ 170.7 *Survey required before proof.* When an entry embraces unsurveyed lands or irregular fractional parts of a subdivision of a surveyed section, a metes-and-bounds survey of such lands and fractional parts must be made at some time before the entryman applies to make final proof. Survey will not be required where the tract can be described by legal subdivisions or as a quarter or a half of a surveyed quarter-quarter section or rectangular-lotted tract, or as a quarter or half of a surveyed quarter-quarter-quarter-section or rectangular-lotted tract.

CROSS REFERENCES: For surveys, Alaska, see Part 78 of this chapter. For surveys generally, see Part 280 of this chapter.

§ 170.8 *Metes-and-bounds surveys authorized.* Under the act of August 10, 1912 (37 Stat. 287; 16 U. S. C. 506), and subsequent acts making appropriations for the Department of Agriculture, authority is given for the making of metes-and-bounds surveys by the forest officers under the direction of the authorized officer of the Department of the Interior.

§ 170.9 *Application for survey; posting on land of copy of approved plat.* Application for survey should be made by the entryman to the regional forester of the region in which the land lies, and upon execution of same and filing of the

approved plat in the land office a copy of same will be sent to the entryman for posting upon the land during the period of publication, and upon receipt of his plat the entryman may apply to submit proof.

§ 170.10 *Commutation not allowed; requirements for proof.* (a) The commutation provisions of the homestead laws do not apply to entries made under the act of June 11, 1906, but all entrymen must make final proof of residence and cultivation within the time, in the manner and under the notice prescribed by the general provisions of the homestead laws, except that all entrymen who are required by §§ 170.7-170.9 to have their lands, or any portion of them, surveyed must, within 5 years from the date of their settlement, present to the manager their application to make final proof of all of the lands embraced in their entries.

(b) Entries made under the act of June 11, 1906, are subject to the provisions of sections 2291 and 2297, Revised Statutes, as amended by the 3-year Homestead Act of June 6, 1912 (37 Stat. 123; 43 U. S. C. 164, 169, 218).

CROSS REFERENCE: For residence and cultivation requirements, see §§ 166.22-166.43 of this chapter.

§ 170.11 *Requirements as to posting of final proof notice, field notes and plats, where homestead entry survey is made.* In all cases where a survey of any portion of the lands embraced in an entry made under the act of June 11, 1906 is required, the manager will, in addition to publishing and posting the usual final-proof notices, keep a copy of the final-proof notice, with a copy of the field notes and the plat of such survey attached, posted in his office during the period of publication, and the entryman must keep a copy of the final-proof notice and a copy of the plat of his survey prominently posted on the lands platted during the entire period of publication of notice of intention to submit final proof, and at the same time his final proof is offered he must file a statement showing the date on which the copies of the notice and plat were posted on the land and that they remained so posted during such period, giving dates.

§ 170.12 *Description of land by metes and bounds not required in proof notices.*

(a) In publishing the notice of intention to submit final proof on entries for lands covered by homestead entry surveys the survey number should not be followed by the description by metes and bounds. The purpose of such omissions is to avoid a lengthy description, the cost of which often causes a real hardship to the entryman.

(b) As a plat of the survey is posted on the land and in the land office, it is deemed sufficient in such publications to give the homestead entry number, list number, survey number, acreage, and the approximate description by section, township, and range numbers.

§ 170.13 *National forest homesteads in southern California and in the Black Hills National Forest.* Section 1 of the said act of June 11, 1906, having been amended by the act of May 30, 1908 (35 Stat. 554; 16 U. S. C. 506), the only counties in southern California in which entries thereunder can not be made, are San Luis Obispo and Santa Barbara, to which counties the act of June 11, 1906, does not apply. Entries made of lands in the Black Hills National Forest can be made only under the terms and upon the conditions prescribed in sections 3 and 4 of the act of June 11, 1906, as amended by the act of February 8, 1907 (34 Stat. 883), and the Act of July 3, 1912 (37 Stat. 188).

§ 170.14 *Classification and listing for homestead entry of land in Custer National Forest.* The act of June 13, 1930 (46 Stat. 583; 16 U. S. C. 510a) prohibits the acceptance by the Secretary of Agriculture of applications for classifications and listing for homestead entry of Custer National Forest lands. The proviso of the act, however, vests in that officer discretionary authority to list limited tracts in that forest when in his opinion such action will be in the public interest and will not be injurious to other settlers or users of the national forest.

§ 170.15 *Conditions governing homestead settlements.* The act of June 11, 1906, does not authorize any settlements within forest reserves except upon lands which have been listed, and then only in the manner set forth in §§ 170.1-170.13, and all persons who attempt to make any unauthorized settlement within such reserves will be considered trespassers and treated accordingly.

§ 170.16 *Claims initiated prior to establishment of forest protected.* The act of June 11, 1906, provides that nothing shall be done to impair in any way the legal rights of any bona fide homestead settler who has or shall establish residence upon public lands prior to their inclusion within a forest reserve and maintains his settlement claim as required by law.

CROSS REFERENCE: For Indian allotments in national forests, Alaska, and generally, see §§ 67.7 and 176.15 of this chapter.

This Circular replaces Circulars Nos. 263, 1170, 1227, 1546, 1689 and 1728.

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1945]

PART 192—OIL AND GAS LEASES

LEASING OF WILDLIFE REFUGE LANDS

Section 192.9 is amended to read as follows:

§ 192.9 *Leasing of wildlife refuge lands.* (a) Geological and geophysical prospecting permits may be issued by the Fish and Wildlife Service on areas subject to its jurisdiction prior to leasing under such terms and conditions as that Service may prescribe.

(b) (1) Areas determined to be indispensable for the preservation of rare or endangered species, remnant big-game herds, and irreplaceable examples of unique animal or plant ecology are not available for leasing. Areas in this category at present are included in Appendix A. Oil and gas leases may be issued for other lands administered by the Fish and Wildlife Service for wildlife conservation, except that; on those areas designated by the Fish and Wildlife Service as wilderness, recreational, water development, or marsh, with respect to which the Fish and Wildlife Service reports that oil and gas development might seriously impair or destroy the usefulness of the lands for wildlife conservation purposes, no leases will be issued unless a complete and detailed operating program for the area, which will insure full protection of the particular values for which established, is approved by the Director, Fish and Wildlife Service. All pending applications on such excepted wilderness, recreational, water development, and marsh areas will be rejected unless within 6 months the applicant files an operating program sufficient to accomplish these purposes. Areas in this category are listed in Appendix B.

(2) The following conditions shall be expressed in any lease issued under this section:

(i) Geological and geophysical prospecting conducted on the leased premises shall be of a type and at a time satisfactory to the Fish and Wildlife Service.

(ii) No drilling operations shall be conducted under the lease until such lease has been committed to an approved unit plan. However, the Secretary may, in his discretion, permit or require drilling if he determines that a unit plan

including the leased area cannot be secured and that drilling is necessary to protect the interests of the United States.

(a) A unit agreement which includes lands administered for wildlife conservation shall contain a provision that no drilling operations may be conducted on the unitized portion of the Government-leased lands administered for wildlife conservation without the consent and approval of the Fish and Wildlife Service as to the time, place, and nature of such operations.

(b) In every instance, a plan of development which includes lands administered for wildlife conservation shall not be approved without the concurrence of the Fish and Wildlife Service.

(iii) Lessees shall observe and comply with all State and Federal laws and regulations relating to wildlife and shall take such action as is necessary to assure observance and compliance with these laws and regulations by lessees, employees and agents.

(Sec. 32, 41 Stat. 450; 30 U. S. C. 189)

DOUGLAS McKAY,
Secretary of the Interior.

APPENDIX A—FISH AND WILDLIFE SERVICE LANDS NOT AVAILABLE FOR LEASING

Alaska:
Certain of the Aleutian Islands.
Georgia:
Okfeenokee.
Hawaii:¹
Certain of the Hawaiian Islands
Maryland:
Patuxent.
Montana:
National Bison Range.
Red Rock Lakes.
Nebraska:
Fort Niobrara.
North Dakota:
Sullys Hill.
Oklahoma:
Wichita Mountains.
Texas:
Aransas.
Santa Ana.
Wyoming:
National Elk.

¹ The regulations in 43 CFR, Part 192 do not apply to the Territory of Hawaii.

APPENDIX B—FISH AND WILDLIFE SERVICE LANDS AVAILABLE FOR LEASING UNDER A SATISFACTORY DEVELOPMENT AND OPERATING PLAN

Alabama:
Pettit Bols (see also Mississippi).
Wheeler.
Alaska:
Chamisso.
Hazen Bay.
Hazy Island.
Kenai: The following areas and all lands within one mile of Tustumena Lake, Skilak Lake, Kenai River, Upper and Lower Russian Lake and River, Hidden Lake, Kaslof River, and Chickaloon Flats.
Pribilof Islands.
St. Lazarus.
Semidi.
Arizona:
Cabeza Prieta Game Range.
Havasu Lake (see also California).
Imperial (see also California).
Kofa Game Range: All Range lands in T. 1 N., Rs. 15-18 W.; T. 2 N., Rs. 16 & 17 W.; T. 1 S., Rs. 15-18 W.; T. 2 S., Rs. 15-19 W.; T. 3 S., Rs. 15, 18, & 19 W.; T. 4 S., R. 17 West ½; T. 5 S., Rs. 17 & 18 W.; T. 4 S., R. 18 W.
Arkansas:
Big Lake.
White River.
California:
Clear Lake.
Colusa.
Farallon.
Havasu Lake (see also Arizona).
Imperial (see also Arizona).
Lower Klamath (see also Oregon).
Sacramento.
Salton Sea.
Sutter.
Tule Lake.
Colorado:
Monte Vista.
Delaware:
Bombay Hook.
Killcohook (see also New Jersey).
Florida:
Anclote.
Brevard.
Cedar Keys.
Chassahowitzka.
Chinsegut.
Great White Heron.
Key West.
Loxahatchee.
Passage Key.
Pelican Island.
Pinellas.
Sanibel.
St. Marks: All refuge lands in Ts. 4 and 5 S., Rs. 1, 2, and 3 E., T. M., and refuge lands in the Hartsfield Survey.

Published in 20 F. R. December 8, 1955

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- Georgia:**
 Blackbeard Island.
 Savannah (see also South Carolina).
 Tybee.
 Wolf Island.
- Idaho:**
 Camas.
 Deer Flat.
 Minidoka.
 Snake River.
- Illinois:**
 Chautauqua.
 Crab Orchard.
 Lands made available by the Corps of Engineers on the Mississippi River between Rock Island and Alton, Illinois (see also Iowa and Missouri).
 Upper Mississippi River Wild Life and Fish Refuge (see also Iowa, Minnesota, and Wisconsin).
- Iowa:**
 Lands made available by the Corps of Engineers on the Mississippi River between Rock Island and Alton, Illinois (see also Illinois and Missouri).
 Union Slough.
 Upper Mississippi River Wild Life and Fish Refuge (see also Illinois, Minnesota, and Wisconsin).
- Kansas:**
 Kirwin Wildlife Management Area.
- Kentucky:**
 Kentucky Woodlands.
- Louisiana:**
 Lacassine.
 Shell Keys.
- Maine:**
 Widow's Island.
- Maryland:**
 Blackwater.
 Chincoteague (see also Virginia).
 Glenn Martin.
- Massachusetts:**
 Great Meadows.
 Monomoy.
 Parker River.
- Michigan:**
 Huron.
 Michigan Islands.
 Seney.
 Shiawassee.
- Minnesota:**
 Beltrami Wildlife Management Area.
 Mille Lacs.
 Mud Lake.
 Rice Lake.
 Tamarac.
 Talcot.
 Upper Mississippi River Wild Life and Fish Refuge (see also Illinois, Iowa, and Wisconsin).
- Mississippi:**
 Noxubee: All refuge lands in the following subdivisions: T. 17 N., R. 13 E., secs. 13, 14, 23, 24, 25, 26, and 36; T. 16 N., R. 14 E., secs. 1-4, 9-15, and 21-24; T. 17 N., R. 14 E., secs. 31-35; T. 16 N., R. 15 E., secs. 4-8 and 16-21.
 Petit Bois (see also Alabama).
- Missouri:**
 Mingo.
 Lands made available by the Corps of Engineers on the Mississippi River between Rock Island and Alton, Illinois.
 Missouri Wildlife Management Area.
 Squaw Creek.
 Swan Lake.
- Montana:**
 Bentoh Lake.
 Bowdoin.
 Medicine Lake: All refuge lands in the following subdivisions: T. 30 N., R. 55 E., all; T. 31 N., Rs. 55 and 56 E., all; T. 31 N., R. 57 E., secs. 3-7, inclusive, all; Sec. 8, N $\frac{1}{2}$ and SW $\frac{1}{4}$; Sec. 9, W $\frac{1}{2}$ NW $\frac{1}{4}$; Sec. 18, N $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$; T. 32 N., Rs. 55, 56, 57, 58 E., all.
 Nine-Pipe.
 Pablo.
 Fishkum.
 Willow Creek.
- Nebraska:**
 Crescent Lake: All refuge lands in the following subdivisions: T. 20 N., R. 44 W., secs. 2-7, inclusive, 9, 10, 11, and 18, all; T. 21 N., Rs. 44 and 45 W., all.
 North Platte.
 Valentine: All refuge lands in the following subdivisions: T. 28 N., R. 27 W., secs. 3-8, inclusive; T. 28 N., R. 28 W., secs. 1 and 12; Ts. 29 and 30 N., Rs. 27 '38, and 29 W., all.
- Nevada:**
 Anaho Island.
 Desert Game Refuge: All Range lands in the following subdivisions: Ts. 9-14 S., Rs. 54-62 E., all; T. 15 S., Rs. 56-62 E., all; T. 16 S., Rs. 56, 57, and 58 E., Secs. 1-6, inclusive; Ts. 16 and 17 S., Rs. 50-62 E., inclusive, all; T. 18 S., Rs. 60, 61, and 62 E., all; also all lands above 6,000' elevation in the following area: T. 17 S., Rs. 54 and 55 E.; Ts. 18 and 19 S., Rs. 54, 55, and 56 E.; T. 20 S., Rs. 55, 56, 57, and 58 E.; T. 21 S., Rs. 56, 57, and 58 E.
 Sheldon National Antelope Refuge.
 Stillwater National Wildlife Management Area.
 Stillwater National Wildlife Refuge.
- New Jersey:**
 Brigantine.
 Killcohook (see also Delaware).
- New Mexico:**
 Bitter Lake: All of the lands of the refuge west of the Pecos River in the following area: T. 9 S., R. 25 E., secs. 14, 15, 21, 22, 23, 26, 27, 28, 32, 33, 34, and 35; T. 10 S., R. 25 E., secs. 3, 4, 5, 8, 9, 10, 11, 14, 15, 16, 20, 21, 22, 28, and 29.
 Bosque del Apache: All refuge lands between the East Side Road and the proposed right-of-way for U. S. Highway No. 85.
- New York:**
 Montezuma.
 New York Wildlife Management Area.
 Elizabeth Tilton.
 Wertheim.
- North Carolina:**
 Mattamuskeet.
 Pea Island.
 Swanquarter.
- North Dakota:**
 Ardoch.
 Arrowwood.
 Chase Lake.
 Des Lacs.
 Lake Ho.
 Kellys Slough.
 Lake Zuhl.
 Long Lake.
 Lostwood.
 Lower Souris: All refuge lands north of the line common to Townships 158 and 159 North.
 Slade.
 Stump Lake.
 Tewaukon.
 Theodore Roosevelt.
 Upper Souris.
- Ohio:**
 West Sister Island.
- Oklahoma:**
 Salt Plains.
- Oregon:**
 Cape Meares.
 Cold Springs.
 Lower Klamath (see also California).
 Malheur.
 McKay Creek.
 Oregon Islands.
 Three Arch Rocks.
 Upper Klamath.
- Puerto Rico:¹**
 Culebra.
- South Carolina:**
 Cape Romain.
 Santee.
 Savannah (see also Georgia).
- South Dakota:**
 Bear Butte.
 Belle Fourche.
 Lacreek.
 Lake Andes.
 Sand Lake.
 Waubay.
- Tennessee:**
 Lake Isom.
 Reelfoot.
 Tennessee.
- Texas:**
 Laguna Atascosa.
 Muleshoe.
- Utah:**
 Bear River Migratory Bird Refuge.
 Locomotive Springs.
- Vermont:**
 Missisquoi.
- Virginia:**
 Back Bay.
 Chincoteague (see also Maryland).
 Presquile.
- Washington:**
 Columbia.
 Copalis.
 Dungeness.
 Flattery Rocks.
 Jones Island.
 Lenore Lake.
 Matia Island.
 Quillayute Needles.
 Smith Island.
 Turnbull.
 Skagit.
 Willapa.
- Wisconsin:**
 Gravel Island.
 Green Bay.
 Horicon.
 Long Tail Point.
 Necedah.
 Necedah Wildlife Management Area.
 Upper Mississippi River Wild Life and Fish Refuge (see also Iowa, Illinois, and Minnesota).
- Wyoming:**
 Hutton Lake.
 Pathfinder: All refuge lands in Townships 29 and 30 N., R. 85 W.

[F. R. Doc. 55-9852; Filed, Dec. 7, 1955; 8:48 a.m.]

¹ The regulations in 43 CFR Part 192 do not apply to Puerto Rico.

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1946]

PART 202—RIGHTS-OF-WAY FOR PIPE LINES ON THE OUTER CONTINENTAL SHELF

A new part 202 is added, reading as follows:

- Sec.
202.1 Purpose and authority.
202.2 Definitions.
202.3 Application.
202.4 Persons qualified to acquire and hold rights-of-way.
202.5 Consent of or notice to lessee of leased area crossed by right-of-way.
202.6 Terms and conditions.
202.7 Approval of right-of-way.
202.8 Terms of grant.
202.9 Proof of construction.
202.10 Assignment of right-of-way.
202.11 Advance permission to commence construction.
202.12 Penalty for failure to comply with the act, regulations, or any conditions imposed under either.
202.13 Appeals.

AUTHORITY: §§ 202.1 to 202.13 issued under sec. 5, 67 Stat. 464; 43 U. S. C. 1334.

§ 202.1 *Purpose and authority.* Section 5 (c) of the Outer Continental Shelf Lands Act of August 7, 1953 (67 Stat. 464), authorizes the Secretary of the Interior to grant rights-of-way for pipeline purposes for the transportation of oil and gas. The purpose of the regulations in this part is to set forth the rules governing the granting and administration of such rights-of-way. The inclusion of this part in this title shall not be construed as an interpretation that the laws and regulations pertaining to public lands or to rights-of-way thereon are applicable to the submerged lands of the outer Continental Shelf.¹

§ 202.2 *Definitions.* (a) "Secretary" means Secretary of the Interior.

(b) "Director" means Director, Bureau of Land Management.

(c) "Manager" means the officer in charge of the local office of the Bureau of Land Management.

¹ Compliance with the regulations of this part does not obviate the necessity of compliance with requirements and regulations of the Department of the Army and the Coast Guard with respect to prevention of obstruction to navigation, lights, and warning devices, and other matters relating to safety of life and property, as authorized by section 4 of the act.

(d) "Right-of-way" includes the site on which the pipe line and associated structures are situated which shall not exceed 200 feet in width for pipe lines and be limited to the area reasonably necessary for pumping stations or other accessory structures. It does not include gathering lines and associated structures constructed for the purpose of conveying production for gathering, storage, or treating of the production from a lease or leases.²

§ 202.3 *Application.*—(a) *Form and requirements.* No special form of application is required. The application should be filed in duplicate and should be in typewritten form or legible handwriting. It must specify that it is made pursuant to the act and these regulations and that applicant agrees that the right-of-way if approved will be subject to the terms and conditions of the regulations in this part. It should also state the primary purpose for which the right-of-way is to be used. The application must be filed in duplicate at the office of the Manager. If the right-of-way has been utilized prior to the time the application is made, the application must state the date such utilization commenced and by whom, and the date applicant obtained control of the improvements. A filing fee of \$10 and the rental required herein under § 202.6 (e) must accompany the application.

(b) *Map showing survey.* Each copy of the application must be accompanied by a map, showing the center line of the right-of-way, properly identified so that the right-of-way may be accurately located by a competent engineer. The map should comply with the following requirements:

(1) The scale shall be at least 1:160,000.

(2) Courses and distances of the center line of the right-of-way shall be given either on the margin of the map or on an attached sheet or sheets with the courses referred to the true or grid meridian, either by deflection from a line of known bearing or by independent observation and calculated distances in feet and decimals.

² The construction of gathering lines may be approved by the Oil and Gas Supervisor in accordance with the provisions of 30 CFR 250.18 and 250.68.

(3) The total distance and width of the right-of-way shall be given, and the diameter of the pipe line specified.

(4) The initial and terminal points of the right-of-way shall be accurately located by latitude and longitude or by grid references.

(5) Each copy of the map shall bear upon its face a statement of the engineer who made the map that the right-of-way is accurately represented upon the map.

§ 202.4 *Persons qualified to acquire and hold rights-of-way.* (a) Applications may be filed by citizens of the United States, associations of such citizens, and by corporations organized under the laws of the United States or of any State or Territory thereof.

(b) An individual and each member of an association applying for a right-of-way must state in the application whether he is a native-born or naturalized citizen of the United States.

(c) (1) A private corporation must file a certified copy of its charter or articles of incorporation.

(2) A corporation other than a private one must file a copy of the law under which it was organized and proof of its organization.

(3) A copy of the resolution or by-laws of the corporation authorizing the filing of the application or a certificate of the Secretary or an assistant Secretary of the Corporation under the corporate seal certifying that the officer executing the application has authority to do so, must be filed. If the application is filed by an attorney-in-fact a certified copy of the resolution of the Board of Directors authorizing his appointment and an executed copy of the power of attorney must be filed.

(4) If the corporation has previously filed any or all of the papers required in subparagraphs (1), (2), and (3), of this paragraph, specific reference to such filing giving date, place, and case number will be accepted as full compliance with such requirements.

§ 202.5 *Consent of or notice to lessee of leased area crossed by right-of-way.* An applicant must show the extent to which the right-of-way applied for invades or crosses mineral leases or rights-of-way other than his own and must submit with his application either the written consent of each lessee or right-of-way holder whose lease or right-of-way is so affected or a statement that he has delivered to each lessee whose

Published in 20 F. R. December 13, 1955

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	Each DGO	5	Miss Williams GS Room 3219	20
All Regional and Field Solicitors	1 ea.		Mrs. Jean Wright Room 6126	1

lease is so affected personally or by registered or certified mail a copy of the application and map. If the statement is filed no final action will be taken on the right-of-way application until 15 days have elapsed after the last date of service of such papers, in order to afford the parties concerned ample opportunity to file protests against the granting of the right-of-way.

§ 202.6 *Terms and conditions.* An applicant, by accepting a right-of-way grant, agrees and consents to comply with and be bound by the following terms and conditions, excepting those which the Secretary may waive in a particular case:

(a) To comply with all existing regulations and with all existing and future regulations which the Secretary determines to be necessary and proper in order to provide for the prevention of waste and conservation of the natural resources of the outer Continental Shelf, and the protection of correlative rights therein.

(b) To pay the United States, or its lessee, as the case may be, the full value for all damages to the property of the United States or its said lessee, and to indemnify the United States against any and all liability for damages to life, person, or property arising from the occupation and use of the area covered by the right-of-way.

(c) To keep the Director informed at all times of his address, and, if a corporation, of the address of its principal place of business and the name and address of the officer or agent authorized to receive service of notice. That in the construction, operation, and maintenance of the project, he shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin and shall require an identical provision in all subcontracts.

(d) That the allowance of the right-of-way shall be subject to the express condition that the rights granted will not prevent or interfere in any way with the management, administration of, or the granting either prior or subsequent to the right-of-way grant of other rights by the United States in, the submerged lands affected thereby, and that he agrees and consents to the occupancy and use by the United States or its lessees of any part of the right-of-way not actually occupied or necessarily incident to its use for any necessary operations involved in such management, administration or the enjoyment of such other granted rights. Subject to the consent of the applicant, the Manager may approve the use of the right-of-way for other pipe lines for oil or for gas.

(e) To pay for the first calendar year or fraction thereof, and thereafter annually in advance an annual rental of \$5 for each mile or fraction thereof traversed by the right-of-way and \$50 for each area applied for as the site for a pumping station or other accessory to the right-of-way. Payments required herein may be annual, for a 5-year period or for multiples of such period.

(f) That upon revocation or termination of the right-of-way, unless the requirement is waived in writing by the Manager, he shall, so far as reasonably possible, restore the area of the right-of-way to its original condition.

§ 202.7 *Approval of right-of-way.* If the application and other required information are found to be in compliance with the law and regulations and the consents required by § 202.5 have been obtained or any protests filed as therein provided have been rejected, the right-of-way will be granted. If the right-of-way as applied for would cross any area withdrawn from disposal or restricted from exploration and operation it will be rejected unless the Federal agency in charge of withdrawn or restricted area shall give its consent to the granting of the right-of-way, but in such case the applicant upon request filed within 30 days after receipt of the rejection notice will be allowed an opportunity to file an amended application rerouting the proposed right-of-way so as to eliminate the conflict.

§ 202.8 *Term of grant.* Any right-of-way granted hereunder shall be for so long as the pipe line is maintained and used for the purpose for which the grant was made, unless otherwise expressly stated in the grant. Cessation of use temporarily shall not terminate the grant, but if the purpose of the grant ceases to exist or use of the pipe line is permanently discontinued for any reason the grant shall be subject to forfeiture.

§ 202.9 *Proof of construction.* Failure to construct the pipe line within 5 years from the date of the grant shall be deemed to be an abandonment of the grant which will be forfeited by an appropriate proceeding. Proof of construction shall be submitted to the Manager. Such proof shall consist of a statement by the holder of the right-of-way that the pipe line has been laid and is in operation. If there is any deviation from the right-of-way as shown on the original map, the unused portion of the grant must be relinquished and maps in duplicate of the location of the right-of-way as constructed, prepared in accordance with § 202.3 must be furnished as soon as possible after the deviation is determined to be necessary or advisable. Any deviation made prior to approval of such supplemental plat will be at the risk of the right-of-way holder.

§ 202.10 *Assignment of right-of-way.* Assignment may be made of a right-of-way in whole or as to any lineal segment thereof after construction subject to the approval of the Manager. Any such assignment must be filed in duplicate accompanied by an application for approval in which the assignee must make the showing required by § 202.4 and agree to the terms and conditions prescribed in § 202.6. No assignment shall be effective to transfer any rights until it is approved. A fee of \$10 must accompany the application for the approval of an assignment.

§ 202.11 *Advance permission to commence construction.* Upon a satisfactory showing of the need therefor, the Director may grant permission to commence construction of a pipe line in advance of any grant of the right-of-way but such permission is not a commitment that the right-of-way will be approved and all work done thereunder prior to the granting of the right-of-way will be at the applicant's risk. No advance permission will be granted for an area or areas not subject to a right-of-way grant.

§ 202.12 *Penalty for failure to comply with the act, regulations, or any conditions imposed under either.* As provided in the act, failure to comply with the act, regulations or any conditions prescribed by the Secretary as to the application therefor and the survey, location and width thereof and upon the express condition that such oil or gas pipe lines shall transport or purchase without discrimination, oil or natural gas produced from said submerged lands in the vicinity of the pipe line in such proportionate amounts as the Federal Power Commission, in the case of gas, and the Interstate Commerce Commission, in the case of oil, may, after a full hearing with due notice thereof to the interested parties, determine to be reasonable, taking into account, among other things, conservation and the prevention of waste, be grounds for forfeiture of the grant in an appropriate, judicial proceeding instituted by the United States in any United States District Court having jurisdiction under the provisions of section 4 (b) of the act. Upon relinquishment of any right-of-way or forfeiture of the grant, the right-of-way owner will be required to remove his improvements within one year from the effective date of such relinquishment or forfeiture unless otherwise provided by law or in the decree of forfeiture.

§ 202.13 *Appeals.* Any person aggrieved by any action taken by the Manager, under this part has the right of appeal to the Secretary in accordance with the provisions and limitations provided in §§ 221.73 to 221.76 of this chapter. Nothing contained in this part shall be construed to prevent any interested party from seeking judicial review as authorized by law.

DOUGLAS MCKAY,
Secretary of the Interior.

DECEMBER 7, 1955.

[F. R. Doc. 55-9976; Filed, Dec. 12, 1955;
8:47 a. m.]

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter Q—Reclamation and Irrigation

[Circular 1947]

PART 230—RECLAMATION OF ARID LANDS BY THE UNITED STATES

ASSIGNMENTS

Sections 230.35-230.37 are revoked in their entirety and §§ 230.29-230.34 are revised to read as follows:

- Sec.
230.29 Statutory authority; when assignments may be made.
230.30 Assignments involving farm units.
230.31 Limitations on and conditions of assignments.
230.32 Showing required.
230.33 When showing is required.
230.34 Requirements for patent.

AUTHORITY: §§ 230.29 to 230.34 issued under sec. 10, 32 Stat. 390, as amended; 43 U. S. C. 373.

§ 230.29 *Statutory authority; when assignments may be made.* The act of June 23, 1910 (36 Stat. 592; 43 U. S. C. 441), authorizes persons who have made or may make homestead entries subject to the reclamation law to assign their entries in whole or in part at any time after filing in the appropriate land office satisfactory proof of the residence, improvements, and cultivation required by the ordinary provisions of the homestead law.

§ 230.30 *Assignments involving farm units.* (a) In cases where the entry involves all or parts of two or more farm units, the entryman may file an election as to which farm unit he will retain and he may assign and transfer to a qualified assignee any farm unit or units or parts of such units which he does not elect to retain. If an election by the entryman to conform to a farm unit be filed and no assignment made of the remainder of the entry, the entry will be conformed to the farm unit selected for retention and canceled as to the remainder.

(b) Where it is desired to assign a part of an established farm unit, an application for the amendment and subdivision of such unit must be filed with the official in charge of the project, together with the showing required by § 230.32. If a survey shall be found necessary to determine the boundaries of the subdivision of any such farm unit, or the division of the irrigable area, a deposit equal to the estimated cost of such survey must be made with the agent cashier, Bureau of Reclamation, on the project by or on behalf of the parties concerned. Any excess over the actual cost will be returned

to the depositor or depositors after completion of the survey, and they will also be required to make good any deficiency in their deposit.

§ 230.31 *Limitations on and conditions of assignments.* (a) The law expressly makes assignments "subject to the limitations, charges, terms, and conditions of the Reclamation Act," which, among other things, limits the right of entry to one farm unit, and forbids the holding of more than one farm unit prior to payment of all construction or building and betterment charges.

(b) Assignments must be an absolute sale, divesting the assignor of all interest in the premises assigned. Assignments may be effected by quitclaim or warranty deed or by any other form of conveyance in general use in the State in which the land is located, but a quitclaim or warranty deed is preferred.

(c) Assignees must be more than 21 years of age and must not own, hold, or claim any other farm unit or entry under the reclamation law or one or more parcels of private land up to the limit of single ownership fixed for the project receiving water from the project system upon which all installments of construction or building or betterment charges have not been paid in full. If the assignee is a married woman, she must purchase the assignment with her own separate money, in which her husband has no interest or claim (39 L. D. 504 and 43 L. D. 364). If the assignment involves a partial farm unit which an entryman does not elect to retain in accordance with § 230.30 (a), the assignee must also have an entry or an assignment covering the remainder of such unit.

§ 230.32 *Showing required.* Whenever assignments are presented to the land office in accordance with § 230.33, they must be accompanied by the following:

(a) A showing that the assignment and the assignee meet the requirements of § 230.31.

(b) The original instrument of assignment, or where the instrument is recorded, a copy thereof certified by the officer who has custody of the record, or where the original instrument of assignment is presented to an officer having

an official impression seal, a copy of the instrument certified by such officer if accompanied by satisfactory evidence of compliance with the documentary stamp tax provisions of the internal revenue law.

(c) A certificate by the official in charge of the project that water-right application therefor is not receivable or that the assignee has filed in the project office for acceptance a water-right application in due form for the land embraced in the assignment.

(d) Where not all the predecessors in interest to an assignee have had their assignments approved by the land office, such assignee, in addition to the showings required by paragraphs (a), (b), and (c) of this section, must submit satisfactory evidence of title to the land consisting of either the recorded deed or deeds in the chain of title from the original entryman, an abstract of title, or a certificate of title issued by a qualified title company which is acceptable to the Department of the Interior.

§ 230.33 *When showing is required.* The showing required by § 230.32 is required whenever an assignment is presented to the appropriate land office for filing. All assignments should be presented for filing. They must be presented, however, when:

(a) The assignments involve, under § 230.30 (a), all or part of farm units which an entryman does not elect to retain, or under § 230.30 (b), parts of established farm units.

(b) The assignee desires to make proof of full compliance with the reclamation law with the view of receiving patent for the land.

§ 230.34 *Requirements for patent.* Upon the approval of an assignment, the assignee will become entitled to a patent upon payment of the water-right charges and submittal of satisfactory proof of reclamation as would have been required of the original entryman, and after proof of compliance with the law.

CLARENCE A. DAVIS,
Acting Secretary of the Interior.

DECEMBER 12, 1955.

[F. R. Doc. 55-10075; Filed, Dec. 15, 1955; 8:45 a. m.]

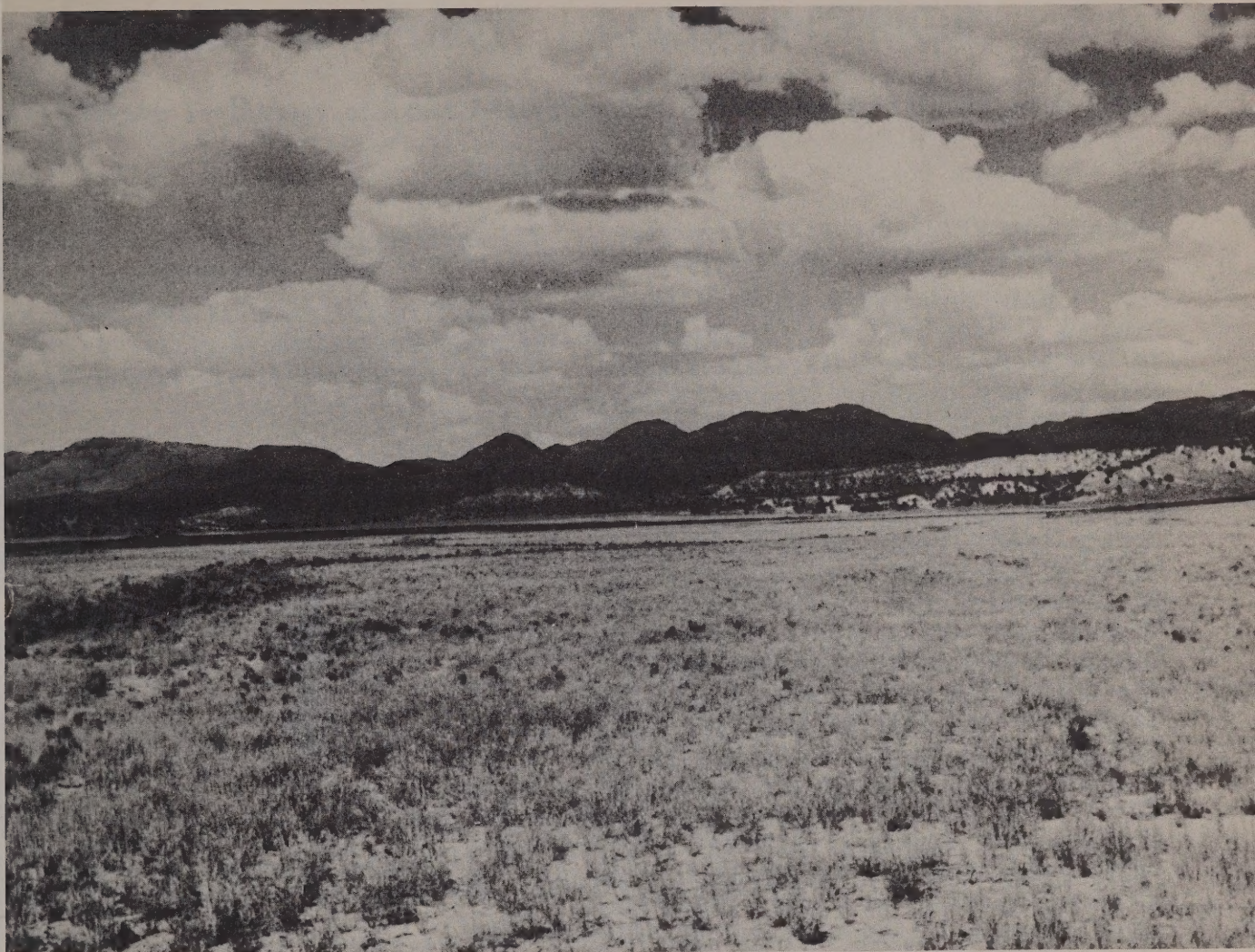
Published in 20 F. R. December 16, 1955

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THE FEDERAL RANGE CODE
Office Copy
FOR GRAZING DISTRICTS



UNITED STATES

DEPARTMENT OF THE INTERIOR

DOUGLAS Mc KAY , Secretary

BUREAU OF LAND MANAGEMENT

EDWARD WOOZLEY , Director



January, 1956

Washington 25, D. C.



THE FEDERAL RANGE CODE
FOR GRAZING DISTRICTS

UNIT STATES

DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

WASHINGTON, D. C.

1964

1964

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular No. 1948]

PART 161—THE FEDERAL RANGE CODE FOR GRAZING DISTRICTS

Part 161, The Federal Range Code for Grazing Districts, is revised, effective 30 days from date of publication, to read as follows:

- Sec.
- 161.1 Basic policy and plan of administration.
 - 161.2 Definitions.
 - 161.3 Qualifications of applicants.
 - 161.4 Minimum requirements; classification of base properties.
 - 161.5 Rating and classification of Federal range.
 - 161.6 Issuance of licenses and permits.
 - 161.7 Transfers of base property; base property qualifications; relinquishments.
 - 161.8 Fees; time of payment; refunds.
 - 161.9 Procedure in applications; protests.
 - 161.10 Appeals and hearings.
 - 161.11 General rules of the range.
 - 161.12 Procedure for enforcement of rules and regulations.
 - 161.13 Grazing District advisory boards.
 - 161.14 Local associations of stockmen.
 - 161.15 Construction and maintenance of improvements on Federal range.
 - 161.16 Special rules for grazing districts.
 - 161.17 Contributions for administration, protection, and improvement of public lands.
 - 161.18 Pledge of licenses and permits as security for loans; applications for extension of permit term by borrower-permittee.
 - 161.19 Saving clause.

AUTHORITY: §§ 161.1 to 161.19 issued under sec. 2, 48 Stat. 1270; 43 U. S. C. 315a.

§ 161.1 *Basic policy and plan of administration.* (a) *Purposes; general requirements.* Grazing districts will be administered to conserve and regulate the public grazing lands, to stabilize the livestock industry dependent upon them, and in aid thereof to promote the proper use of the privately controlled lands and waters dependent upon those public grazing lands. In furtherance of these objectives, grazing privileges will be granted with a view to the protection of those livestock operations that are recognized as established and continuing and which normally involve the substantial use of the public range in a regular, continuing manner each year. To promote the highest use of the public lands within grazing districts which have been or hereafter are established, possession or control of sufficient land or water to insure a year-round operation for a certain number of livestock in connection with the use of the Federal range will be required of all users.

(b) *Preference applicants.* Preference in the granting of grazing privileges will be given to those applicants within or near a district who are landowners engaged in a livestock business, bona fide occupants or settlers, or owners of water or water rights, as may be necessary to permit the proper use of lands, water, or

water rights owned, occupied, or leased by them. When the demands of all such preference applicants cannot be satisfied, prior consideration will be given applicants in the manner specified in § 161.6. Provision will be made for other applicants so far as Federal range remains available.

(c) *Permits; annual licenses.* Grazing permits may be issued as soon as the necessary data can be obtained or after agreements as to the extent of their individual grazing privileges have been reached by the interested applicants and such agreements have been reduced to writing, a recommendation thereon made by the advisory board, and approval thereof given by the range manager. No such agreement will be approved unless it appears that it is fair and that it represents a substantial compliance with the provisions of the Federal Range Code for Grazing Districts, and no applicant shall be prejudiced by his failure or refusal to enter into such an agreement. The practice of issuing an annual license will be continued until such time as a permit is issued. Upon the issuance of a permit any outstanding license or part thereof which has been granted on the same qualifications on which the permit is based will terminate. Upon expiration of a term permit an annual license may be issued, pending issuance of a new term permit.

§ 161.2 *Definitions.* Wherever used in rules, instructions, or interpretations issued by the Bureau of Land Management in or pursuant to the Federal Range Code for Grazing Districts, unless the context otherwise requires:

(a) The "act" means the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269; 43 U. S. C. 315, 315a-315r), as amended and supplemented.

(b) "The Federal Range Code for Grazing Districts" means all of the rules and regulations pertaining to the administration of grazing districts.

(c) The "Secretary" means the Secre-

tary of the Interior or his authorized agent.

(d) The "Director" means the Director of the Bureau of Land Management or his authorized agent.

(e) "State Supervisor" means the supervising Bureau of Land Management officer for the State in which the particular range lies, or his authorized agent.

(f) "Federal range" means land within established grazing districts administered by the Bureau of Land Management under the Federal Range Code for Grazing Districts, including the vacant, unappropriated, and unreserved public land of the United States chiefly valuable for grazing and forage crops; State, County, and privately-owned land leased for such administration; and lands so administered pursuant to a cooperative agreement with the Federal department or agency having jurisdiction over such land.

(g) "Property" means privately owned or controlled land or water used in range livestock operations.

(h) "Base property" means property used for the support of the livestock for which a grazing privilege is sought and on the basis of which the extent of a license or permit is computed.

(i) "Base property qualifications" means the maximum amount of grazing privileges on Federal range properly allowable to base properties in Class I or Class II.

(j) "Forage land" means land the principal use of which is the production of natural or cultivated feed for livestock.

(k) (1) "Land dependent" by use means forage land other than Federal range of such character that the conduct of an economic livestock operation requires the use of the Federal range in connection with it and which, in the "priority period", was used as a part of an established, permanent, and continuing livestock operation for any ten consecutive years or for any three years

of such priority period in connection with substantially the same part of the public domain, now part of the Federal range. The priority period shall be the five-year period immediately preceding June 28, 1934, except that if such Federal range was placed within a grazing district after June 28, 1938, or added to an existing grazing district by boundary modification after the latter date, the priority period shall be the five years immediately preceding the date of the order establishing such district or effecting such addition, as the case may be.

(2) No land shall be considered as dependent by use unless offered as base property in an application for a grazing license or permit within one year after the date when the Federal range used in creating the dependency by use first became a part of a grazing district, except that if the Federal range used in creating the dependency by use became part of a grazing district prior to June 28, 1938, such base property shall not be considered as dependent by use unless offered in an application for a grazing license or permit filed prior to said date. Only the last set of base properties used during the priority period by a livestock operation can be invested with dependency by use by such operation.

(3) The extent to which grazing licenses or permits will be granted on the basis of dependency by use of land, shall be governed by the following:

(i) It shall not exceed the average annual amount of forage customarily and properly utilized by the livestock operation computed on the basis of any two consecutive years or any three years in which use was actually made during the priority period, whichever is more favorable to the applicant, on that part of the public land which, at the time of the issuance of the license or permit, is Federal range.

(ii) It shall not exceed the amount of forage needed for the proper support of the number of livestock creating such

dependency by use which is available on the base property during the minimum period established under § 161.4.

The grazing privileges which may be granted hereunder shall not exceed the amounts determined under subdivision (i) or (ii) of this subparagraph, whichever is the lesser. Where the base property provides forage in excess of that necessary for the proper support of the number of livestock used in creating the dependency by use (Class I) the base property, to the extent of such excess forage capacity, may be treated as dependent by location (Class II) if so qualified.

(iii) Whenever the dependency by use of two or more base properties was created by the use of all or part of the same Federal range, during the same or at different seasons of the year, by two or more livestock operations, the relative dependency by use of each of the base properties shall be proportionate to the average annual use actually and properly made of the Federal range during the priority period by each of the livestock operations.

(1) "Land dependent by location" means forage land other than Federal range, which is so situated and of such character that it can properly be used as a base for an economic livestock operation utilizing the forage resources of the Federal range.

(m) "Animal-unit month" means the amount of natural or cultivated feed necessary for the sustenance of one cow or its equivalent, for a period of one month; as applied to Federal range, it means also the grazing privileges represented by the grazing of one cow or its equivalent for a period of one month. For the purposes of this definition, one cow shall be considered the equivalent of one horse or five sheep or five goats; provided, however, that only for the purposes of establishing fees for grazing privileges under § 161.8 (b), the charge

for one horse grazing on the Federal range for one month shall be at twice the rate charged for one cow grazing for the same period.

(n) "Grazing capacity" means the total animal-unit months of forage available from a tract or tracts of forage land during a given period.

(o) "Full-time water" means water which is suitable for consumption by livestock and available, accessible, and adequate for a certain number of livestock during those months in the year for which the range is classified as suitable for use. Such water may be from one source or may be the aggregate amount available from several sources.

(p) (1) "Prior water" is water which, during all or not less than two years of the priority period was used to service certain public domain now part of the Federal range for a livestock operation that was established, permanent, and continuing, and which, normally involved the grazing of livestock on the same areas of public land for a certain portion or portions of the years of such use. For the purpose of this definition the priority period shall be the five-year period immediately preceding June 28, 1934, except that in any area placed within a grazing district or added to an existing district by boundary modification after September 23, 1942, the priority period shall be the five-year period immediately preceding the date of the order establishing such district or effecting such addition, as the case may be.

(2) Where a livestock operation used a water or waters during the priority period in such manner as would, in the absence of other factors, have served to invest such water with the attribute of priority, but such livestock operation subsequently ceased using such water or waters and used other water or waters in such manner as to invest them, too, with priority, only the latter water or waters shall be considered as prior, un-

less the former are also prior because of use by another livestock operation.

(3) No water shall be considered as prior unless offered as base property in an application for a grazing license or permit filed within one year after the public lands which were used in creating the priority first became a part of a grazing district except that when such lands became a part of a grazing district more than one year prior to March 16, 1942, a water shall not be considered as prior unless offered in an application filed prior to that date.

(4) The extent to which grazing privileges will be granted on the basis of the priority of water shall not exceed the average annual amount of forage customarily and properly utilized by the livestock operation computed on the basis of the years in which use was actually made during the priority period, on substantially that part of the public lands within the service area which, at the time of the issuance of the license or permit, is Federal range.

(q) "Service area" means the area that can be properly grazed by livestock watering at a certain water. In determining such area, natural and cultural barriers, recognized habits of livestock, proper livestock practices, and range management factors will be considered.

§ 161.3 *Qualifications of applicants—*

(a) *Qualifications.* An applicant for a grazing license or permit is qualified if engaged in the livestock business and:

(1) Is a citizen of the United States, or

(2) Has on file before a court of competent jurisdiction a valid declaration of intention to become a citizen or a valid petition for naturalization, or

(3) Is a group, association, or corporation authorized to conduct business under the laws of the State in which the grazing privileges sought are to be exercised, and the controlling interest in which is vested in persons who would be qualified as individual applicants

under subparagraphs (1) or (2) of this paragraph.

(b) *Effect of transfer arising through operation of law.* The acquisition of rights in base property by an unqualified person through operation of law or testamentary disposition will not adversely affect any outstanding license or permit, or preclude the issuance or renewal of a license or permit, based on such property, for a period of two years after such acquisition. Upon the failure of such person to qualify within the two year period the license or permit will be subject to cancellation in accordance with § 161.9 (d).

§ 161.4 *Minimum requirements; classification of base properties.* (a) The range manager, after recommendation by the advisory board, shall establish minimum base property requirements as a condition of qualification for the issuance of a license or permit in each district or unit thereof, taking into consideration the availability of base properties for proper use with and their relative dependence upon Federal range, land and water conditions, and other factors affecting livestock operations in the area according to customary use and best practices for good range management.

(b) The range manager after recommendation by the advisory board will classify base properties as land or water and further in the following manner:

Class 1. Land dependent by use, or full-time prior water.

Class 2. Land dependent by location, or full-time water.

§ 161.5 *Rating and classification of Federal range—*(a) *Grazing capacity; seasons and maximum annual period of use.* The range manager, after recommendation by the advisory board, will rate the grazing capacity of each unit or area in a grazing district and will classify each for the proper seasons of use and for the maximum period of time for

which any licensee or permittee will be allowed to use the Federal range therein during any one year.

(b) *Wildlife; allowance for maintenance.* In each grazing district a sufficient grazing capacity of Federal range suitable for wildlife will be reserved by the range manager after consulting with wildlife interests and the advisory board, for the maintenance of a reasonable number of wild game animals, to use the range in common with livestock grazing in the district.

(c) *Designation of ranges for particular kinds of livestock.* The range manager may designate certain areas for use exclusively by a certain kind or class of livestock when necessary for the proper use or orderly administration of the Federal range.

(d) *Unit-wide or area-wide adjudication.* (1) The range manager, after recommendation by the advisory board, may make a simultaneous classification under § 161.4 of all offered base properties within a single administrative unit or grazing area and may allocate in a single action the available Federal range within the unit or area upon which such base properties are dependent.

(2) The Range Manager, shall give written notice by registered mail¹ of such classification and allocation to the persons offering such base properties, and allow them 30 days from receipt of the written notice to file protest to the Advisory Board, in accordance with § 161.9 (b). Thereafter, and provided there is then pending a valid application for grazing privileges, the range manager will render his final decision thereon and will allow the right of appeal to the Examiner in accordance with § 161.10.

(e) *Diminution of available Federal range.* Federal range lands to be used

¹ Wherever registered mail is required in this part, Certified mail may be used in lieu thereof in accordance with § 101.19 of this chapter.

under a license or permit are subject to classification and disposition under the provisions of sections 7 and 14 of the act, and to withdrawal, appropriation, selection, or other disposal under the public land laws. Reasonable notice of a pending or proposed classification, withdrawal or other disposal which might result in a diminution of the available Federal range will be given to the licensee or permittee of such lands, consistent with § 296.3 of this chapter, and subject to the right of protest or appeal to the Director and to the Secretary of the Interior as may be provided in such notice and the rules of practice, Part 221 of this chapter.

§ 161.6 *Issuance of licenses and permits.* Licenses or permits will be issued in the following order:

(a) *Free-use licenses.* A free-use license will be issued to any free-use applicant for grazing on Federal range in the immediate neighborhood of the applicant's residence for not to exceed the number of livestock owned and kept by him for domestic purposes, that is, livestock whose products are consumed or whose work is directly and exclusively used by the family of the applicant, provided the free-use applicant has adequate facilities for the proper care and maintenance of such domestic livestock on the Federal range.

(b) *Regular licenses and permits; number of livestock.* (1) Regular licenses and permits will be issued to qualified applicants to the extent that Federal range is available in the following preference order and amounts:

(i) To applicants owning or controlling land in class 1, licenses or permits to the extent of the dependency by use of such land; to applicants owning or controlling water in class 1, licenses or permits to the extent of the priority of such water.

(ii) To applicants owning or controlling land or water in class 2, licenses or permits for the number of livestock for

which range is available and which can be properly grazed in connection with a livestock operation which involves the use of such land or water.

(2) Any licensee or permittee who desires to use the Federal range for a period or periods other than as authorized by his license or permit may, upon written approval of the range manager, be allowed to use the amount of his authorized grazing privileges during any period of time for which the Federal range is classified as proper for use, provided:

(i) The total of such use does not exceed the maximum amount of time for which any licensee or permittee is allowed to use the Federal range during any one grazing year;

(ii) The number of animal-unit months of Federal range to be utilized is not thereby increased;

(iii) Such use will not be detrimental to the Federal range, and

(iv) Such use will not adversely affect other licensees or permittees.

(c) *Exchange of the use licenses.* Exchange of use licenses may be issued to any applicant having ownership or control of non-Federal land interspersed and normally grazed in conjunction with the surrounding Federal range for not to exceed the grazing capacity of such non-Federal land, without payment of grazing fees, provided that during the term of the license the Bureau shall have the management and control of such non-Federal land for grazing purposes.

(d) *Non-renewable licenses.* Non-renewable licenses may be issued to non-preference applicants only for the period specified by the range manager and for the number of livestock for which range is temporarily available and which can be properly grazed without detriment to the operations on the range of applicants owning or controlling base properties in class 1 and class 2.

(e) *Terms and conditions.* The issuance and continued effectiveness of

regular licensees and permits will be subject to the following terms and conditions:

(1) The possession or control by the applicant, licensee, or permittee, of feed and forage supplies adequate, with the authorized Federal range use, to support his licensed or permitted livestock for a full year-round operation.

(2) No license or permit will provide for the grazing livestock on the Federal range during that part or parts of the year for which the Federal range has not been classified as proper for use.

(3) No license or permit will confer grazing privileges in excess of the grazing capacity of the Federal range to be used.

(4) So far as consistent with proper range practices, licenses and permits will confer grazing privileges on the range lands which were used in creating the dependency by use or priority of the base properties involved.

(5) In the event of range depletion resulting from drought or other causes, the grazing privileges that may be exercised under any license or permit may be reduced in whole or in part, and for such period of time as may be necessary.

(6) Upon the diminution of the Federal range to be used under any license or permit due to withdrawal, appropriation, selection, or otherwise, the license or permit may be reduced proportionately to the reduction in available grazing capacity caused by the loss of such Federal range.

(7) If a licensee or permittee ceases to make substantial use of his base property in connection with his year-round livestock operation, the authorized use under such license or permit will be subject to reduction in proportion to the diminished use of the base property.

(8) If a licensee or permittee loses ownership or control of:

(i) All or part of his base property, the license or permit, to the extent it is based upon such lost property, shall

terminate immediately without further notice from the range manager; except that, if the licensee or permittee notifies the range manager, in writing, of such loss within thirty days from the date thereof, such license or permit shall terminate to that extent at the end of the grazing season or grazing year as the range manager shall determine; or

(ii) All or part of such other lands or grazing privileges as are necessary to his year round operation, the license or permit will be subject to reduction in proportion to the loss of such necessary lands or grazing privileges unless the licensee or permittee notifies the range manager within 30 days after such loss and thereafter within the time allowed by the range manager after recommendation by the Advisory Board acquires ownership or control of other lands or grazing privileges sufficient to assure a year-round operation.

(9) Class I base property qualifications, in whole or in part, will be lost upon the failure for any two consecutive years:

(i) To offer base property which is not covered by an outstanding current term permit to the full extent of its qualification in an application for a license or permit or renewal thereof, or to apply for non-use thereof in whole or in part or

(ii) To accept a license or permit issued pursuant to such application.

(10) The failure for any two consecutive years to make substantial use as determined by the range manager after reference to the advisory board, of all or part of the grazing privileges authorized under a license or permit may result in the revocation thereof and in the proportionate loss of the base property qualifications.

(11) Non-use, in whole or in part, of grazing privileges under a license or permit may be authorized by the range manager, upon application by the licensee or permittee, after reference to the advisory board, for the following

reasons: conservation and protection of the Federal range, annual fluctuations in livestock operations, or financial or other reasons beyond the control of the licensee or permittee.

(12) A revocation of a license or permit in whole or in part may result in a proportionate loss of the class I or class II base property qualifications, as the case may be.

(13) (i) No readjudication of any license or permit, including free use license, will be made on the claim of any applicant or intervener with respect to the qualifications of the base property, or as to the livestock numbers or seasons of use of the Federal range allotment where such qualifications or such allotment has been recognized and license or permit has issued for a period of three consecutive years or more, immediately preceding such claim.

(ii) The Bureau of Land Management may make such readjudication at any time when necessary to comply with the Federal Range Code for Grazing Districts.

(14) Where Federal range is allotted for the exclusive grazing use of one or more users, the range manager, if the proper use or orderly administration of the range makes it necessary:

(i) May require the licensee(s) or permittee(s), as a condition to the granting and continued effectiveness of grazing licenses or permits, to fence or to contribute an equitable share to the cost of fencing the allotted areas, and of maintenance of such fences;

(ii) May require any licensee or permittee who will benefit in some substantial measure from such fence construction, as a condition to the renewal of an existing license or permit, likewise to pay or to reimburse an equitable share of the cost of such fence construction and maintenance. The amount of such share may be established by agreement of the parties, or, upon their failure to agree, by determination of the range manager.

Any necessary enforcement action under this subparagraph will be taken in accordance with § 161.9 (d).

(f) *Reduction.* (1) If necessary to reach the grazing capacity of any area of the Federal range after licenses or permits have been issued, reductions of grazing privileges applicable to such area shall be made in the following order:

(i) Non-renewable licenses.

(ii) Regular licenses or permits to the extent, if any, to which they have been issued in excess of the base property qualification.

(iii) Regular licenses or permits properly issued, on an equal percentage basis.

(2) Such reductions may be made either by reducing the number of livestock or the time on the Federal range involved or by both methods as determined by the range manager after recommendation by the Advisory Board.

(g) *Allotments; agreements; increases.* Allotments of Federal range will be made to licensees or permittees when conditions warrant. Division of the range by private agreement or former practice will be followed where practicable provided such agreement is reduced to writing and approved by the range manager. Increases in grazing capacity will be participated in by existing preference licensees and permittees to the extent of and in proportion to their respective qualifications.

(h) *Administration of lands additionally available; preference right for lands restored from withdrawal.* (1) Any land within the exterior boundaries of a grazing district made available for administration by the Bureau of Land Management, by a lease under the Pierce Act of June 23, 1938 (52 Stat. 1033; 43 U. S. C. 315m-1-315m-4), by the revocation of a withdrawal, or by the cancellation or relinquishment of a homestead entry or claim, or otherwise, after the grazing privileges in the area embracing the

and have been adjudicated, will be administered in accordance with customary use so far as such administration may be practicable and consistent with good range management.

(2) Where public lands are restored from withdrawal and the range manager determines that the lands are available for grazing use, the party using such lands or part thereof for grazing purposes under authority of the agency which had jurisdiction over the lands immediately prior to their restoration, shall have a superior preference to the further grazing use of such lands. The preference right must be asserted and an application for license or permit, on Form 4-1283 obtainable from the range manager, must be filed with that officer not more than 90 days after the date of signing of the order of revocation of the withdrawal, or not more than 90 days after the end of the current lease year under which the land is being used, whichever is the later. The application must be accompanied by a copy of the prior lease, license, permit or other authority upon which the preference claim is based. The range manager may issue to such applicant an annual license or a term permit as he shall determine, authorizing such grazing use subject to the applicable regulations in this part. (Sec. 1, act of May 28, 1954 (68 Stat. 151), as interpreted and applied to sec. 3, Taylor Grazing Act, 43 U. S. C., 1952 ed., sec. 315 (h)).

(i) *Suspension of licenses and permits under Soldiers' and Sailors' Civil Relief Act of 1940.* Any licensee or permittee who enters military service, as defined in section 101 (1) of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1179; 50 U. S. C. War Appendix, 511 (1)), may elect at the beginning of or at any time during the period of such service to suspend his license or permit, in whole or in part, for such period and six months thereafter, subject to the following:

(1) The licensee or permittee shall

file with the range manager an application, in duplicate, setting forth the facts and circumstances upon which the application for suspension of the license or permit is based. If the applicant desires the suspension of a license or permit in more than one district, a separate application shall be filed with the range manager for each district.

(2) Upon the approval of the application the suspension shall be effective for the period involved, unless sooner terminated upon further application to the range manager by the licensee or permittee, and no operations under the license or permit to the extent suspended shall be conducted during such period.

(3) No grazing fees will be assessed under a license or permit to the extent and during the period it is suspended and, upon the approval of an application for suspension, any fees that have been paid for the period of suspension will be refunded and any fees that are or may become due for such period will be remitted.

(4) A special temporary license, to the extent of any grazing privileges suspended, may be issued to another applicant for not to exceed the period of such suspension, but upon the termination of the suspension, either by reason of the expiration of the six months' period following the conclusion of the first licensee's or permittee's military service or by reason of an application by the first licensee or permittee for an earlier termination, or otherwise, such temporary license shall terminate as of the beginning of the grazing period next following the termination of the suspension.

(5) No suspension granted hereunder shall entitle a licensee or permittee to any greater privileges subsequently than those to which he would have been entitled in the absence of a suspension.

(6) Any adverse action by the range manager on an application for suspension of a license or permit under this paragraph may be appealed by the li-

censee or permittee to the Director, and from the Director to the Secretary of the Interior, in accordance with the rules of practice, Part 221 of this chapter.

(j) *Interest of Member of Congress prohibited.* No Member of or Delegate to Congress shall be admitted to any share or part of any license or permit issued under the Act, or to derive any benefit to arise therefrom. (41 U. S. C., sec. 22; 18 U. S. C., secs. 431-433.)

CROSS REFERENCE: For prohibitions against interests of Interior Department employees, see Part 7 of this chapter.

§ 161.7 *Transfers of base property; base property qualifications; relinquishments—*(a) *Transfer of base property; effect.* (1) A transfer of a base property or part thereof, whether by agreement, operation of law, or testamentary disposition will entitle the transferee, if qualified under § 161.3 (a), to so much of the grazing privileges as is based thereon. In any event the original license or permit will be terminated or decreased to the extent of such transfer.

(2) A transferee shall, within 90 days from the date of transfer, file with the range manager documentary evidence of the transfer and an application on Form 4-1283 for a license or permit, active or nonuse, for the grazing privileges based thereon. Failure to comply with these requirements may result in the loss of the qualifications of the base property transferred. Where, however, a transfer, or a different vesting in any manner, of a leasehold interest in land or water may result in interference with the stability of livestock operations or with proper range management, upon a finding to that effect by the range manager, after reference to the advisory board, such land or water will lose its base property qualifications and grazing privileges based thereon will be denied.

(b) *Transfer of base property qualifications; limitations; consent of owner*

or encumberancer; effect. (1) A licensee or permittee may request the transfer of the recognized qualifications of base property then owned or controlled by him to other property owned or controlled by him, or to property owned or controlled by another person or persons qualified in accordance with § 161.3 (a). An application for approval of a transfer shall be filed with the range manager on Form 4-1284 as to land base, or on Form 4-1285 as to water base. Transfer of base property qualifications may be made under the following conditions:

(i) When an applicant owns or controls base land or lands having a forage production in excess of that required to support the licensed or permitted livestock, the qualifications may be concentrated on that part of the property having the forage production required by and which will continue to be used for the support of such livestock.

(ii) When such qualifications are to be transferred from land owned or controlled by the applicant, to land owned or controlled by others, the transfer will be recognized only to the extent such qualifications do not exceed the forage production of the new base property.

(iii) When an applicant owns or controls base water, the qualifications may be transferred to another adequate water source which will service the same range area.

(3) No transfer will be allowed under this paragraph if it interferes with the stability of livestock operations or proper range management, or adversely affects the local economy. No transfer will be allowed without the written consent of the owner or owners and any encumberancer of the base property from which the transfer is to be made, except that in an application for transfer of Class 1 qualifications where the applicant for such transfer is a lessee of the base property without whose livestock operations the dependency by use or priority thereof would not have been established

such consent will not be required. Upon approval of the application by the range manager after reference to the advisory board, the transfer shall be effective as of the date of filing of the application, and the base property from which the transfer is made will thereupon lose its qualifications to the extent indicated in the transfer.

(c) *Relinquishment of base property qualifications; limitation; effect.* Upon request of a licensee or permittee, the range manager may accept a relinquishment or waiver of grazing privileges on the Federal range and of base property qualifications of the base property owned or controlled by the applicant. Upon acceptance of such relinquishment, the base property will lose its qualifications to the extent specified, provided that no such relinquishment will be accepted without the written consent of the owner or owners, if other than the licensee or permittee, and any encumbrancer of the base property, except that if the licensee or permittee is a lessee of the base property without whose livestock operations the dependency by use or priority thereof would not have been established, such owner's consent will not be required.

§ 161.8 *Fees; time of payment; refunds—*(a) *Free-use licenses.* No fee will be charged for the issuance of a free-use license.

(b) *Licenses and permits.* Each regular licensee or permittee, and holder of a non-renewable license will be charged fees, consisting of a grazing fee for the use of the range and a range improvement fee, as established from time to time, for the animal unit months authorized by the license or permit. All livestock six months of age or over allowed on the Federal range will be considered at any point of time during the grazing period as a part of the total number for which a license or permit has been issued. No fees will be charged for livestock under six months of age. Range

improvement fees, upon the recommendation of the advisory board and approval of the Director, may vary in accordance with the character or requirements of the various districts or portions thereof. Grazing fees may differ in any district or unit thereof in which the grazing capacity of the Federal range is increased by reason of the addition of land not owned by the United States, or by reason of a cooperative agreement or memorandum of understanding between the Bureau of Land Management, and any State or Federal agency, or any person, association, or corporation. A minimum annual charge of \$1 will be made on all regular licenses or permits, and non-renewable licenses.

NOTE: In accordance with § 161.8 (b) of the Federal Range Code for Grazing Districts (19 F. R. 8958, December 23, 1954) and pursuant to the act of June 28, 1934 (48 Stat. 1275), as amended, notice is hereby given that effective January 1, 1956, fees for grazing privileges (equivalent to 15 cents per animal unit month) will be charged each regular licensee or permittee, and every holder of a non-renewable license, for the period covered by the license or permit, as follows: 15 cents per cow per month; 30 cents per horse per month; 3 cents per sheep or goat per month. Seventy-five percent of the total fee will be a grazing fee and twenty-five percent will be a range improvement fee.

This revised basis for computing the grazing and range improvement fees will become effective with all payments received on and after January 1, 1956.

(c) *Crossing permits.* Upon application filed with the range manager by any person showing the necessity for crossing the Federal range with livestock for proper and lawful purposes, a crossing permit may be issued to him at a charge, payable in advance, of one cent per head per day for cattle, 2 cents per head per day for horses, and one-fifth cent per head per day for sheep and goats; except that no fee will be charged where the trail to be used is so limited and defined that no substantial amount of forage will

be consumed in transit, or to the extent the crossing permit involves the use of a stock driveway created under section 10 of the Stockraising Homestead Act of December 29, 1916 (39 Stat. 862; 43 U. S. C. 300)

(d) *Payment of fees; reduction or increase in numbers; extension of periods of use.* No license or permit shall be issued or renewed until payment of all fees and other amounts due the United States under the Federal Range Code for Grazing Districts has been made. Fees for licenses and permits are due the United States upon issuance of the fee notice pursuant to application and are payable annually at least 15 days in advance of the first grazing period and for the full amount indicated on the fee notice; no license or permit shall be effective to authorize grazing use thereunder until such payment has been made.² A permit may be canceled or reduced pursuant to § 161.9 (d) for failure to pay the annual fee in accordance with the fee notice. Any licensee or permittee who desires to make temporary use of the grazing privileges during any authorized grazing period or periods in a manner other than that authorized in his existing license or permit must obtain the permission of the range manager at least 30 days prior to the beginning of any such grazing period, in which case an adjusted fee notice will be issued accordingly.

(e) *Refunds.* No refund of fees properly paid will be made because of an unauthorized failure to use the grazing privileges, either in whole or in part, represented by a license or permit, except that:

(1) During periods of range depletion

² Any grazing on the Federal range within grazing districts in the absence of effective license or permit is unlawful and prohibited; such unauthorized grazing shall be deemed in trespass and may be proceeded against as provided in § 161.12, or by other action under the law.

due to severe drought or other natural causes or in case of a general epidemic of disease during the life of a license or permit, the Director may in his discretion credit, remit, refund, reduce in whole or in part, or postpone the payment of fees for such depletion period so long as the emergency exists.

(2) When fees have been paid which are not required by law, or which are in excess of lawful requirements, an application for refund thereof may be filed with the range manager under the provisions of the act of March 26, 1908, as amended (35 Stat. 48; 43 U. S. C. 95, et seq.), or such excess fees may be credited on subsequent fee notices.

§ 161.9 *Procedure in applications; protests—*(a) *Filing and consideration of applications; inter-district agreements; recommendations; service of notice.* (1) Each year a date will be set by the range manager prior to which all applications³ for grazing licenses or permits in the district must be filed in his office; applications filed on or after such date may be rejected for that year unless satisfactory justification for the belated filing is shown.

(2) Applications for grazing licenses or permits will be considered first by the advisory board of the district in which the Federal range is located, except that applications of district advisers will be considered first by the range manager, without reference to the advisory board.

(3) Where a grazing area or unit is located in one district, but is administered by the range manager of an adjacent district pursuant to a formal inter-district agreement, applications for grazing licenses or permits on such area or unit shall be filed with the range

³ 18 U. S. C. 1001 makes it a crime for any person knowingly and wilfully to submit or cause to be submitted to any agency of the United States any false, fictitious, or fraudulent statements or representations as to any matter within its jurisdiction.

manager of the adjacent district. The advisory board of the district in which the land is actually located may designate one or more of its members, on its behalf, in cooperation with the advisory board of the adjacent district, to make appropriate recommendations to the range manager of the adjacent district with respect to such applications.

(4) The advisory board will make its recommendation to the range manager and, if such recommendation is to any extent adverse, it shall set forth the reasons therefor. If such recommendation is favorable, the range manager will notify the applicant by ordinary mail. If the recommendation is to any extent adverse, notice will be served on the applicant in person or by registered letter sent to his address of record, setting out the reason or reasons given by the advisory board for the adverse recommendations including a reference to the pertinent sections or provisions of the Federal Range Code for Grazing Districts in which the application is deficient, and naming a place and date, not less than ten days thereafter, when protests against the recommendation will be heard. In any case where consideration of an application involves only issues previously adjudicated involving the same applicant or his predecessors in interest, the same base property and the same area of use, the advisory board may decide that a protest meeting be not held; whereupon, the range manager shall act upon the recommendation of the board as its final recommendation.

(b) *Protests; reconsideration by advisory board; service of notice.* At the time and place fixed for the protest meeting, any licensee, permittee, or applicant may appear, in person or by attorney or other representative, or may file a written protest with the advisory board, which thereupon will reconsider its previous recommendation in the light of the protest and will make a final recommendation to the range manager. If

such recommendation is favorable to the applicant, and the range manager approves, he will notify the applicant thereof by ordinary mail. If the recommendation is to any extent adverse, and the range manager approves, a notice giving the reason or reasons therefor will be served on the applicant in person or by registered mail, including a reference to the pertinent sections or provisions of the Federal Range Code for Grazing Districts in which the application is deficient. Such notice will constitute the range manager's final decision for purposes of appeal.

(c) *Allowance or rejection of application; modification; service of notice.* The range manager, in the light of all facts and circumstances and after reference to the advisory board, may issue or refuse to issue a grazing license or permit. If the action taken by the range manager on any application is substantially different from that recommended by the advisory board, a notice including a recital of the specific reasons for the action taken will be served on the applicant and on any other applicant or applicants adversely affected by such action, in person or by registered mail. The notice will advise each applicant of his privilege to appeal to an examiner.

(d) *Cancellation or reduction of licenses or permits; show cause; appeal to examiner.* Licenses or permits are subject to cancellation or reduction to the extent that they have been improperly issued, or to the extent that their continued effectiveness is adversely affected pursuant to any of the provisions of § 161.3 (b), § 161.6 (e), § 161.8 (d), § 161.14 (d) or § 161.15 (f). Except as otherwise specifically provided, in any such case or in any case in which it shall appear that a license or permit confers grazing privileges in excess of those properly allowable under the Federal Range Code for Grazing Districts, the range manager will notify the licensee or permittee that the license or permit is

thereby held for cancellation or reduction either in whole or in part, as the case may be, and that the licensee or permittee will be allowed fifteen days from receipt of notice within which to show cause why such action should not be made final. Such notice will set forth fully the reasons for the proposed action, specifically referring to the pertinent provisions of the Federal Range Code for Grazing Districts, and will be served on the licensee or permittee by registered mail or in person. In case of failure of the licensee or permittee to show cause within the time allowed, the license or permit will be canceled or reduced to the extent indicated in the notice. The range manager will consider any cause shown and, if satisfied of its sufficiency, will close the case; if not satisfied as to its sufficiency, or if no cause is shown, he will notify the licensee or permittee in person or by registered mail that the cancellation or reduction will become final unless an appeal to the examiner is filed in accordance with § 161.10 (a).

§ 161.10 *Appeals and hearings*—(a) *Appeal to examiner; motion to dismiss.* (1) Any applicant whose interest is adversely affected by a final decision of the range manager may appeal to an examiner by filing his appeal in the office of the range manager within 30 days after receipt of the decision. The appeal shall state the reasons, clearly and concisely, why the appellant thinks the decision of the range manager is in error. All grounds of error not stated will be considered as waived, and no such waived ground of error may be presented at the hearing unless ordered or permitted by the examiner.

(2) When separate appeals are filed and the issue or issues involved are common to two or more appeals, they may be consolidated for purposes of hearing and decision.

(3) The range manager will promptly forward the appeal to the State Super-

visor. Within thirty days after his receipt of the appeal, the State Supervisor may file on behalf of the range manager a written motion, serving a copy thereof upon the appellant, requesting that the appeal be dismissed for the reason that it is frivolous, the appeal was filed late, the errors are not clearly and concisely stated, the issues are immaterial, or all issues involved therein have been previously adjudicated in an appeal involving the same privileges, the same parties or their predecessors in interest. The appellant may file a written answer within twenty days after service of the motion upon him. The appeal, motion, the proofs of service, and the answers will be transmitted to the examiner, who shall rule on the motion, and, if the motion is sustained, dismiss the appeal by written order.

(b) *Time and place of hearing; notice; intervenors.* At least thirty days before the date set the range manager will notify the appellant of the time and place of the hearing within or near the district. Any other person who in the opinion of the range manager may be directly affected by the decision on appeal will also be notified of the hearing; such person may himself appear at the hearing, or by attorney, and upon a proper showing of interest, may be recognized by the examiner as an intervenor in the appeal.

(c) *Authority of examiner; subpoenas; depositions; continuances; witness fees.*

(1) The examiner is vested with the duty and general authority to conduct the hearing in an orderly, impartial and judicial manner, including authority to subpoena witnesses, recognize intervenors, administer oaths and affirmations, call and question witnesses, regulate the course and order of the hearing, rule upon offers of proof and the relevancy of evidence, and to make findings of fact, conclusions of law, and a decision. The examiner shall have authority to take or to cause depositions to be

taken. Subpoenas, depositions, the attendance of witnesses, and witness and deposition fees shall be governed by Parts 221 and 223 of this chapter, to the extent such regulations are applicable.

(2) The examiner also may grant or order continuances, and set the times and places of further hearings. Continuances shall be granted in accordance with the rules of practice (Part 221 of this chapter), and when the ends of justice will be served thereby. Continuances will not be granted unless they are clearly justified and timely request has been made. Where it appears prior to the date of hearing that a continuance will be desired, the party desiring the continuance should promptly file a request for continuance with the examiner, along with proof of service of the request on the range manager and on other parties. The range manager and other parties shall have five days from receipt of the request to file objection to the continuance. The examiner will then rule on the request, and, if granted, set a new date for the hearing. The range manager will notify all interested persons of the new date.

(d) *Conduct of hearing before examiner.* (1) The appellant, the state supervisor or his representative, and recognized intervenors will stipulate so far as possible all material facts and the issue or issues involved. The examiner will state any other issues on which he may wish to have evidence presented. Issues which appear to the examiner to be unnecessary to a proper disposition of the case will be excluded; but the party asserting such issue may state briefly for the record the substance of the proof which otherwise would have been offered in support of the issue. Issues not covered by the appellant's specifications of error may not be admitted except with the consent of the state supervisor or his representative, unless the examiner rules that such issue

is essential to the controversy and should be admitted. The parties will then be given an opportunity to submit offers of settlement and proposals of adjustment for the consideration of the examiner and of the other parties.

(2) Unless the examiner orders otherwise, the state supervisor or his representative will then make the opening statement, setting forth the facts leading to the appeal (or issuance of the show cause order where that is involved). Upon the conclusion of the opening statement, the appellant shall present his case, consistent with his specifications of error. Following the appellant's presentation, or upon his failure to make such presentation, the examiner, upon his own motion or upon motion of any of the parties, may order summary dismissal of the appeal with prejudice because of the inadequacy or insufficiency of the appellant's case, to be followed by a written order setting forth the reasons for the dismissal and taking such other action under the Federal Range Code for Grazing Districts as may be proper and warranted. An appeal may be had from such order as well as from any other final determination made by the examiner.

(3) In the absence or upon denial of such motion the State Supervisor or his representative and recognized intervenors may present evidence if such a presentation appears to the examiner to be necessary for a proper disposition of the matters in controversy, adhering as closely as possible to the issues raised by the appellant. All oral testimony shall be under oath or affirmation, and witnesses will be subject to cross-examination by any party to the proceeding. The examiner will himself question any witness whenever it appears necessary. Documentary evidence will be received by the examiner and made a part of the record, if pertinent to any issue, or may be entered by stipulation. No exception need be stated or noted and every

ruling of the examiner will be subject to review on appeal. The party affected by an adverse ruling sustaining an objection to the admission of evidence, may insert in the record, as a tender of proof, a brief written statement of the substance of the excluded evidence; and the opposing party may then make an offer of proof in rebuttal. The examiner will summarily stop examination and exclude testimony on any issue which he determines has been adjudicated previously in an appeal involving the same privileges and the same parties or their predecessors in interest, or which is obviously irrelevant and immaterial to the issues in the case. At the conclusion of the testimony the parties at the hearing shall be given a reasonable opportunity, considering the number and complexity of the issues and the amount of testimony, to submit to the examiner proposed findings of fact and conclusions of law, and reasons in support thereof, or to stipulate to a waiver of such findings and conclusions.

(e) *Findings of fact and decision by examiner; notice; submission to Director for decision.* (1) As promptly as possible after the time allowed for presenting proposed findings and conclusions, the examiner will make findings of fact and conclusions of law unless waiver has been stipulated, and will render a decision upon all material issues of fact and law presented on the record. In doing so he may adopt the findings of fact and conclusions of law proposed by one or more of the parties if they are correct. He must rule upon each such proposed finding and conclusion. The reasons for the findings, conclusions and decisions made shall be stated, and along with the findings, conclusions and decision, shall become a part of the record in any further appeal. A copy of the decision shall be sent by registered mail to the appellant and all intervenors, or their attorneys of record.

(2) The Director may require, in any

designated case, that the examiner make only a recommended decision and that such decision and the record be submitted to the Director for consideration. In such instances the Director shall make the initial decision which shall constitute the decision of the Bureau, without prejudice to the right of any party affected to be furnished with a copy of the transcript of testimony, as provided in the next paragraph, and to appeal to the Secretary in the manner prescribed by the rules of practice (Part 221 of this chapter).

(f) *Notice of appeal to the Director; furnishing copies of the transcript.* Within ten days after the receipt of the decision of the examiner any party, including state supervisor or his representative, desiring to appeal to the Director shall file a written notice of his intention to appeal and may request a copy of the transcript of testimony. Copies of the transcript will be furnished to the state supervisor without charge, and to other appellants and to the intervenor at a charge of ten cents per folio, except that upon a sufficient showing to the examiner, supported by an affidavit, that an appellant or intervenor is financially unable to pay such fee, a copy will be furnished him without charge. The examiner shall include in the record proof of delivery of the transcript showing the date of such delivery. Notice of appeal and request for a copy of the transcript shall be filed through the office of the Hearing Examiner.

(g) *Appeals to the Director.* An appeal from any decision of the examiner shall be filed in the office of the Director, Bureau of Land Management, Washington 25, D. C., together with any brief in support thereof, within thirty days after date of receipt of the transcript of testimony, or, if the transcript is not requested, within thirty days after receipt of the examiner's decision. A copy of the appeal and of any brief must be served on each party, including the State.

supervisor either personally or by registered mail. Any party, including the State supervisor, opposing the appeal, will be allowed twenty days from date of receipt of the copy of the appeal and brief within which to file in the office of the Director a reply brief, a copy of which must be served upon the appellant in the same manner. The appeal in other respects shall be made in accordance with the rules of practice (Part 221 of this chapter).

(h) *Appeals to the Secretary of the Interior.* An appeal from the decision of the Director may be made to the Secretary of the Interior in accordance with the rules of practice (Part 221 of this chapter).

(i) *Effect of decision suspended during appeal.* (1) An appeal shall suspend the effect of the decision from which it is taken pending final action on the appeal. Where the appeal is concerned with the grazing privileges to be granted under the current application, an appellant who was granted grazing privileges in the preceding year may continue to use such privileges pending final action on the appeal, unless the decision appealed from is made immediately effective, as herein next provided.

(2) When the orderly administration of the range or other public interest so requires, (i) the range manager may provide initially in his decision that it shall be in full force and effect pending decision on an appeal therefrom; (ii) the examiner or the Director may provide in the decision on an appeal before such officer, that it shall be in full force and effect pending decision on any further appeal; (iii) the Director or the Secretary may provide by interim order that any decision from which an appeal is taken shall be in full force and effect pending final decision on the appeal. Any action taken by the range manager pursuant to a decision shall be subject to modification or revocation by the Examiner, Director, or the Sec-

retary upon an appeal from the decision. In order to insure the exhaustion of administrative remedies before resort to court action, no decision which at the time of its rendition is subject to appeal to a superior authority in the Department shall be considered final so as to be agency action subject to judicial review under sec. 10 (c) of the Administrative Procedure Act of June 11, 1946 (60 Stat. 237), unless it has been made effective pending a decision on appeal in the manner provided in this paragraph.

(j) *Record as basis of decision; definition of record.* No decision shall be rendered except on consideration of the whole record or such portions thereof as may be cited by any party or by the state supervisor and as supported by and in accordance with the reliable, probative and substantial evidence. The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding shall constitute the exclusive record for decision.

(k) *Notice and proof of service.* Any notice or other papers required to be served under this section shall be served in person or by registered mail sent to the last address of record, and proof of service furnished. Proof of service shall consist of the affidavit of the person making the personal service, signed acknowledgement of the person served, or the registry return receipt.

(l) *Effect of substantial compliance.* No adjudication of grazing privileges will be set aside on appeal, if it appears that it is reasonable and that it represents a substantial compliance with the provisions of the Federal Range Code for Grazing Districts.

§ 161.11 *General Rules of the range—*

(a) *Acts prohibited.* The following acts are prohibited on the Federal range:

(1) Grazing livestock upon, allowing livestock to drift and graze on, or driving livestock across the Federal range, in-

cluding stock driveways, without an appropriate license or permit, regular or free-use, or a crossing permit.

(2) Grazing livestock upon or driving livestock across the Federal range, including stock driveway, in violation of the terms of a license or a permit, either by exceeding the number of livestock permitted, or by allowing livestock to be on the Federal range in an area or at a time different from that designated, or in any other manner.

(3) Constructing or maintaining any kind of improvements, structures, fences, or enclosures on the Federal range, including stock driveways, without authority of law or a permit.

(4) Destroying, molesting, disturbing, or injuring property used or acquired for use by the United States in the administration of Federal range, including stock driveways, or improvements constructed or maintained under section 4 of the act.

(5) Cutting, burning, or removing vegetative cover, brush, woodland growth, or timber for any purpose, except as authorized by law. Permits to carry on controlled burning of vegetative cover or brush may be issued by the range manager in proper cases, subject to such conditions as he may impose, and to all State laws and regulations concerning such burning.

(6) Molesting or driving from the Federal range without authority livestock lawfully grazing thereon under license or permit.

(7) Interference with licensed hunters or fishermen to enter, and hunt and fish on the Federal range covered by such license or permit; or with the entrance of miners, prospectors and mineral lessees of the United States to prospect, locate, develop, mine or patent the mineral resources on such Federal range; or with other persons entitled to enter such range for lawful purposes.

(b) *Rules of fair range practice.* All licensees and permittees shall comply

with the following rules of fair range practice:

(1) The statutory provisions of the State in which the Federal range or stock driveway to be used is located relating to the branding of livestock and sanitary requirements shall be followed.

(2) A crossing permittee shall follow the route prescribed in the crossing permit at an average rate of not less than five miles per day for sheep or goats and ten miles per day for cattle or horses, but an increased or decreased rate of travel may be prescribed in the discretion of the range manager.

(3) All licensees and permittees shall provide adequate salt on the range for their licensed or permitted livestock, and shall bed sheep and goats according to instructions issued by the range manager. Upon request by the majority of the users of any community allotment of Federal range, the range manager may prescribe the time for, breed, grade, and number of bulls to be turned into such allotment in the absence of such express requirements the provisions of State law on the subject shall be applicable.

§ 161.12 *Procedure for enforcement of rules and regulations.* A grazing license or permit may be suspended, reduced, or revoked, or renewal thereof denied for a clearly established violation of the terms or conditions of the license or permit, or for a violation of the act or of any of the provisions of the Federal Range Code for Grazing Districts, or of any approved special rule.

(a) *Violations not clearly wilful.* Whenever it appears that a violation exists, not clearly wilful, the range manager shall serve written notice upon the alleged violator and upon any interested lien holder who has registered notice of his lien with the range manager. The notice shall set forth the act or omission constituting such violation, referring to the specific terms or provisions of the license or permit, of the act or of the Federal Range Code for Grazing

Districts or of any approved special rule alleged to have been violated; and will allow the licensee or permittee a reasonable specified time from receipt of notice to demonstrate that there has been no violation or that he has since achieved compliance with such terms and conditions. If such showing is satisfactory to the range manager he will close the case; if satisfactory showing is not made within the time allowed, the violations alleged in the notice will be deemed to have been wilful and the range manager will notify the state supervisor thereof for further action under paragraph (e) of this section.

(b) *Violations clearly wilful; special circumstances.* Whenever it appears to the range manager that a violation is clearly wilful or when the public health, safety, or interest requires, the range manager will refer the matter directly to the state supervisor for further action under paragraph (e) of this section.

(c) *Unlawful grazing on Federal range; removal of livestock; impoundment.* (1) Whenever the charge consists of unlawfully grazing livestock on the Federal range, the notice served on the alleged violator and any interested lien holder who has filed notice of his lien with the range manager will order the alleged violator to remove the livestock or to cause them to be removed immediately or within such reasonable time as may be specified. If the alleged violator fails to comply with the notice the range manager may proceed to exercise the proprietary right of the United States in the Federal range, under local impoundment law and procedure, if practicable; otherwise he may refer the matter through the usual channels for appropriate legal action by the United States against the violator.

(2) In any case where the owner of the trespassing livestock, or his representative, is unknown, or where conservation of the Federal range and of the forage thereon requires it, the range manager

when so authorized by order of the State Supervisor may take steps to remove the trespassing livestock by such methods and by such means, including the use of airborne or motor-driven vehicles, as may be necessary, and to dispose of them by sale or otherwise within not less than 48 hours after public notice of his intention to make such disposition, subject to the right of any owner or registered lien holder of such trespassing livestock to redeem the livestock within such non-disposal period upon payment of (i) the value of the forage consumed, (ii) damage to the Federal range and other property of the United States, and (iii) the cost of such impoundment and removal, as determined by the range manager.

(3) Where conservation of the Federal range and the forage thereon requires it, the State Supervisor, with the approval of the Area Administrator, may temporarily close a grazing district or any portion thereof, to grazing by any class of livestock to be specified in such order. Notice of the order shall be published in a local newspaper and shall be posted at the County Courthouse of the County in which the closed area lies. The order shall require all owners of livestock affected thereby, to remove such livestock from the area within not less than five days from date of publication of the notice. Thereafter the range manager shall proceed to impound, remove, and dispose of, in the most humane manner in accordance with the provisions of this paragraph any such livestock trespassing or grazing in violation of the closing order.

(d) *Amicable settlement of civil cases involving damage to Federal property.* All offers of settlement for the value of the forage consumed in trespass and for damage to Federal range or to other property of the United States resulting from an alleged violation of any provision of the act or of the Federal Range Code for Grazing Districts will be transmitted to the State Supervisor for con-

sideration. An offer of settlement will not constitute satisfaction of civil liability for the damage involved until finally accepted by the State Supervisor and in no event will it relieve the violator of criminal liability. No license or permit will be issued or renewed until payment of any amount found to be due the United States under this section has been offered and until payment of any amount due as grazing fees has been made.

(e) *Disciplinary action for violations; show cause.* (1) Whenever it appears to the State Supervisor that a wilful violation exists he shall cause a written notice to be served upon the licensee or permittee. The notice shall set forth the act or acts complained of, specifically referring to the terms, conditions, or provisions of the license or permit, or of the Federal Range Code for Grazing Districts alleged to have been violated, and an estimate of the amount of damages resulting therefrom, including the value of any forage consumed. The notice will cite the licensee or permittee to appear before an examiner of the Bureau of Land Management at a designated time and place to show cause why his license or permit should not be reduced or revoked or renewal thereof denied and satisfaction of damages made.

(2) The hearing upon the order to show cause will be conducted so far as practicable in the same manner as other hearings before an examiner. The evidence shall be confined to the commission of the acts charged and the amount of damages, if any, due to the United States. If the alleged violation is established to the satisfaction of the examiner, or upon the failure, without proper excuse satisfactory to the examiner, of the person named in the notice or his representative to appear at the hearing, the examiner will render a written decision assessing the amount of damages and directing the range manager to suspend, reduce, or revoke the

license or permit or to deny renewal, if the facts so warrant.

(f) *Bonds for violations.* Whenever an applicant, licensee, or permittee commits a wilful or wanton violation of any provision of the Federal Range Code for Grazing Districts or has repeatedly committed violations thereof, the State Supervisor may require him to furnish a cash or corporate surety bond on an approved form to cover all probable damages that may result from his violations for a period up to ten years. Upon the violator's failure to furnish a bond when so required, the range manager may refuse to issue or renew a license or permit, or the State Supervisor may take action under paragraph (e) of this section, to revoke such license or permit.

(g) *Penal provision.* Under section 2 of the act any wilful violation of the provisions of the act or of the Federal Range Code for Grazing Districts or of approved special rules, after actual notice of the existence of the provisions of such act or of such rules and regulations, is punishable by a fine of not more than \$500.

(h) *Appeals.* Appeal from the decision of the examiner to the Director and from the Director to the Secretary on any matter under this section shall be made in accordance with the applicable provisions of § 161.10 and the rules of practice (Part 221 of this chapter).

§ 161.13 *Grazing District Advisory Boards—(a) Authorization for establishment; number of members; qualifications.* The State Supervisor shall fix the number of members to be elected for appointment to the advisory board in each district, such number to be not less than five nor more than twelve, exclusive of a wildlife representative who will not be elective but shall be appointed directly by the State Supervisor. The State Supervisor may fix the number of district advisers to be elected as representatives of each class of stockmen according to the kind of livestock owned,

or may fix the number to be elected from each voting precinct, or both, provided that the free-use licensees in each district shall be entitled to one representative who shall be a free-use licensee. All district advisers, except the wildlife representative, shall be electors qualified to vote in the particular election. If a district is divided into precincts an adviser representing a precinct shall qualify in the precinct in the same manner as in the district.

(b) *Election; time and place; the general procedures.* All district advisers, except wildlife representatives, shall be elected in the manner provided in this section, and in the General Procedures for Grazing District Advisory Board Elections as approved by the Director, Bureau of Land Management and published in the FEDERAL REGISTER. An election of district advisers for each grazing district will be held within ninety days after the publication in the FEDERAL REGISTER of the order establishing the grazing district. Persons elected as advisers at the first election of the new district may hold office for a three-year term, or the range manager may divide the group, by lot, as evenly as may be, into three classes to serve for one year, two years, or three years respectively, and until their successors are elected and have qualified. Thereafter in such new district and in existing district, the Range Manager, after recommendation by the advisory board, shall determine whether elections shall be held annually or every three years and whether by actual polling or by mail, in accordance with the options in the General Procedures for Grazing District Advisory Board Elections.

(c) *Appointment; term of office; removal; vacancies.* Upon receipt of the judges' certificate of returns after conclusion of the election procedure the Range Manager shall notify the State Supervisor of the results thereof. A person elected as district adviser shall as-

sume office only after he has been appointed by the State Supervisor and has taken the oath of office. Such person shall serve for the term for which he has been elected and until his successor is elected and has qualified. The State Supervisor may remove any district adviser from office because of failure to discharge his duties, loss of any of his qualifications to hold the office, or in the public interest. Upon a vacancy occurring in the office of a district adviser other than a wildlife representative by reason of resignation, removal, disqualification, or otherwise, the board shall recommend the name of a person to fill the vacancy and such recommendation, together with that of the range manager, shall be transmitted to the State Supervisor for consideration. A person appointed to fill a vacancy shall hold office until the next regular election. The wildlife representative shall hold office for a term of three years and until a successor is appointed by the State Supervisor.

(d) *Meetings; organization.* District advisory boards shall meet at any time and place within or near the district designated by the State Supervisor or his authorized representative. At the first meeting of the board after an election, it shall organize by electing one of its members as chairman and such other officers from its membership as it may deem necessary. Meetings of a district advisory board shall be open to the public except that, with the approval of the Bureau representative present, it may meet in executive session to consider applications for the granting of licences or permits or any other business.

(e) *Functions and duties of district advisers; limitations.* District advisers shall advise or make recommendations on the following matters:

(1) The qualifications, classification, and requirements of base property.

(2) The transfer and relinquishment of base property qualifications.

(3) The grazing capacity of the Federal range in the district.

(4) Applications for all types of grazing licenses or permits, including nonuse, or extension of use, except applications of district advisers.

(5) Cancellation of grazing licenses or permits when related to: failure to use base property, loss of all or part of lands used in year-round operation, range depletion, failure to offer base property or to validate a license or permit, or failure to use grazing privileges.

(6) Agreements as to the extent of individual grazing privileges, when such agreements have been reduced to writing and found to be equitable and in substantial compliance with the provisions of the Federal Range Code for Grazing Districts.

(7) Variance in range improvement fees in accordance with the character and requirements of the district or portions thereof.

(8) Requirements for unit or allotment boundary fences and apportionment of costs between the benefiting licensees or permittees.

(9) Proper rules of fair range practice.

(10) Allotments of range by classes of livestock or for community or individual use.

(11) Seasonal use of the Federal range or any part thereof.

(12) Cooperative agreements or application for the construction or maintenance of improvements on the Federal range under section 4 of the act and assignments thereof.

(13) Work plans under the range improvement, weed control or soil and moisture conservation programs.

(14) Any recommendations made by local associations of stockmen in the district.

(15) Reservations of grazing capacity of Federal range for wild game animals, including any agreements in connection

therewith proposed for execution with State or Federal wildlife agencies.

(16) Special rules for the district, within the meaning of § 161.16.

(17) Any other matter which they may desire to bring to the attention of the Director, or on which their advice may be requested.

(f) *State Advisory Boards.* Each grazing district advisory board shall select from its members, at the first meeting of the board after each election, two members and two alternates to serve on a State Advisory Board for the State in which the district is located; where the district advisory board has representation for cattle and horses, and sheep and goats, then only one representative and one alternate representing each class shall be selected. The wildlife members of the advisory boards within each State may select one of their number and one alternate to serve on the State Advisory Board as their representative on wildlife matters.

(g) *National Advisory Board Council.* Each State Advisory Board shall select from its members, at its first meeting of each new term, one representative and one alternate representing cattle and horses, and one representative and one alternate representing sheep and goats, to serve on a National Advisory Board Council. The wildlife members of the several State Advisory Boards in each of the three B. L. M. Areas may select one of their number and one alternate to serve on the National Council as their area representative on wildlife matters.

(h) *Functions and duties of State Advisory Boards and National Advisory Board Council.* In addition to the service rendered on grazing district advisory boards, the State Advisory Board members shall consider and make recommendations on grazing administration policies or problems affecting the State as a whole. The National Advisory Board councilmen, in addition to serving their respective district and State Ad-

visory Boards, shall consider and make recommendations on grazing administration policies and problems of national scope.

§ 161.14 *Local associations of stockmen*—(a) *Organization*. Qualified applicants for grazing licenses or permits in any grazing district may organize a local association, or several associations, according to classes of livestock, or by community of interest or otherwise.

(b) *Articles of incorporation; constitutions; by-laws*. Such associations shall be organized as corporations "not-for-profit", if permissible under the laws of the State in which the grazing district, or the greater part thereof, is situated; or they may be organized as cooperative unincorporated associations. In either case the articles of incorporation, the charters, or the constitutions of such associations shall be submitted to the State Supervisor for approval before the association may be recognized by the Bureau. The by-laws of such associations need not be submitted but in any instance in which they are in conflict with the provisions of the Federal Range Code for Grazing Districts or the terms of any license, permit, or cooperative agreement issued to or made with an association, the latter shall prevail.

(c) *Powers*. Such local association shall be authorized to exercise one or more of the following powers, to be specifically set forth in the articles of incorporation, charter, or constitution, as the case may be, of such association:

(1) To make contributions in cash, property, material or labor toward the administration, protection, and improvement of the Federal range lying within the district.

(2) To construct and maintain fences, wells, reservoirs, and other improvements necessary to the care and management of the livestock grazed in the district, under permit issued by the Bureau.

(3) To act in an advisory capacity in

the administration of the Federal range lying within the district.

(4) To recommend the amount, manner of apportionment, time, and method of collection of assessments for strictly association purposes, as well as for the public purposes contemplated by the act.

(5) To enter into cooperative agreement for any of the foregoing purposes or for any other purposes authorized by the act. In addition, the association's powers may include, among others, the power to lease or otherwise acquire the control of State, county, privately owned, tax default, or other lands within or near a district.

(d) *Cooperative agreements for use of lands; obligation of licensees and permittees to share cost*. Whenever the grazing capacity of Federal range is increased whether by reason of the acquisition of control of any lands by the Bureau or otherwise, through a cooperative agreement with a local association, any licensee or permittee benefiting thereby, whether a member of the association or not, shall pay to the association his proportionate share of the cost of the association lands and of the cost of installation, development, and maintenance of range improvements, including reseeding, plus any authorized association assessments for other expenses. Such share shall be determined by the range manager after consideration of the recommendation of the association. The range manager may refuse to issue a license or permit to any applicant or may cancel or refuse to renew the license or permit of any licensee or permittee to graze on any lands covered by such agreement, whether public or association lands, and whether or not such applicant, licensee, or permittee is a member of the association, if he fails or refuses to pay to the association any of the foregoing charges.

§ 161.15 *Construction and maintenance of improvements on the Federal range*—(a) *Qualification of applicants*

for permits. An applicant for a permit to construct or maintain improvements under section 4 of the act, or to use and maintain improvements of such character constructed and owned by a prior occupant, on the Federal range, must be qualified under § 161.3 (a).

(b) *Applications.* Applications for such permits shall be filed in triplicate with the range manager on form 4-1115.

(c) *Appeals.* The range manager will act on the application after reference to the advisory board and such action shall be final unless the applicant or any interested party appeals in accordance with § 161.10.

(d) *Assignments.* Assignments of section 4 permits shall be filed with the range manager in triplicate on the authorized form and shall not be effective until approved by the range manager.

(e) *Applications for use of improvements owned by prior occupant; procedure upon failure to agree.* Where an application shows that the applicant and the prior occupant have not agreed on the value of such improvements owned by the latter, the range manager will promptly, at the applicant's expense, cause the prior occupant to be served either personally or by registered mail with a notice of the filing of the application, and an order to show cause within thirty days why the improvements should not be determined to be of the value alleged by the applicant. Upon such a showing, or if the prior occupant applies within thirty days from the date of service for an appearance before the range manager, then in the light of such evidence as the applicant and the prior occupant may present in such appearance, the range manager will determine the present reasonable value of the improvements. Such determination shall be final unless an appeal is taken in accordance with § 161.10. Upon the failure of the prior occupant to show cause or to apply within thirty days for an

appearance, the reasonable value of the improvements will be determined by the range manager but shall be not less than the amount alleged by the applicant in his application, and the decision of the range manager in such case shall be final. In any case when a decision has become final, payment by the applicant of the amount determined and a showing that the improvements are free of all encumbrances may be required prior to favorable action on the application for use of such improvements, and on any application for grazing privileges involving the use of such improvements.

(f) *Cooperative agreements.* A licensee or permittee may enter into a cooperative agreement with the range manager for the construction and maintenance of range improvements on the Federal range. Failure of the licensee or permittee to comply with the terms of such an agreement within a reasonable time as allowed by the range manager may result in cancellation of the license or permit as provided in § 161.9 (d).

(g) *Applications for lands containing range improvements; compensation; reservation.* Public lands embraced in a license or permit are subject to classification and disposition under the provisions of sections 7 and 14 of the act, or other public land laws, as specified in § 161.5 (e).

(1) When the disposal application covers land upon which range improvements have been placed pursuant to a permit authorized under section 4 of the act, the owner thereof may be required to remove the improvements; or if the improvements are of a permanent nature, the land applicant may be required to agree in writing to compensate the licensee, permittee, or other owner of such improvements located on the lands applied for, in an amount to be mutually agreed upon, or, if the parties are unable to agree, then in the amount and within the time for payment as deter-

mined by the range manager in accordance with the applicable procedure under paragraph (e) of this section.

(2) (i) When the disposal application covers public land upon which range improvements have been placed by the United States, or pursuant to a cooperative agreement heretofore or hereafter entered into between the Bureau and the licensee, permittee, and/or other cooperators, the disposal application will be referred by the land office manager to the range manager for determination as to whether it may be allowed, notwithstanding such improvements, and, if so, whether with or without a reservation. If the application is to be allowed without a reservation of the improvements, the applicant may be required to agree in writing to compensate for the loss of such improvements in the amounts to be mutually agreed upon and payable separately to the Bureau and to the co-operators. In the event of disagreement, the range manager shall determine the total amount of compensation due, as provided in paragraph (e) of this section, and the time for payment. Such amount shall then be payable separately to the Bureau and to the cooperators entitled thereto, in proportion to the amount or value of their respective contributions in money, material, or labor, to the total cost of the improvement, as made by them under the original cooperative agreement, as specified by the range manager.

(ii) The refusal or failure of the land applicant to pay the licensee, permittee, or other party entitled thereto, in accordance with the agreement or in the amount fixed by the range manager and within the time allowed, shall be just cause for the rejection of an application or for the cancellation of any rights or interests in the lands acquired by the applicant by reason of the allowance of his application. Such rejection or cancellation shall be subject to the right of appeal directly to the Director and to

the Secretary, in accordance with the rules of practice (Part 221 of this chapter).

(3) Under the act of July 9, 1942, as amended (43 U. S. C. sec. 315q), the holder of a grazing license or permit shall be compensated for the losses sustained by reason of cancellation of or prevention of use of authorized grazing privileges resulting from the use of lands embraced in such license or permit for war or national defense purposes, in an amount determined to be fair and reasonable and to be paid by the head of the Federal department or agency making such use. Such payment shall be deemed payment in full for such losses.

§ 161.16 *Special rules for grazing districts.* Whenever it appears to a state supervisor after considering the recommendation of the district advisory board that local conditions in any district make necessary the adoption of a special rule on any of the matters in the Federal Range Code for Grazing Districts in order better to achieve an administration consistent with the purposes of the act, he may, with the concurrence of the Area Administrator, recommend such a rule, supported by a factual showing of its necessity, for the approval of the Director. Such rule, if approved, shall be published in the **FEDERAL REGISTER**.

§ 161.17 *Contributions, for administration, protection, and improvement of public lands.* The State Supervisor may accept contributions, under section 9 of the act, of labor, materials, equipment, or money, toward any of the Bureau's functions in administering, protecting, and improving public lands under its jurisdiction in the states.

(a) Any individual, association, corporation, grazing district advisory board, state or local body or private group, may enter into an agreement with the State Supervisor with respect to such contribution. Where the contribution is to in-

clude money, the contributor should execute form 4-1268 or 4-1269 as requested by the range manager.

(b) Contributions may be conditioned upon their use for specific projects or in specific localities.

(c) Upon written request of the contributor, the State Supervisor may authorize refund of any amounts deposited, in excess of the contributor's proper share of the expense incident to the purpose for which the contribution was made.

§ 161.18 *Pledge of licenses and permits as security for loans; application for extension of permit term by borrower-permittee.* (a) A license or permit may be pledged as security for a loan of \$500 or more from a lending agency if the loan is for the purpose of furthering the licensee's or permittee's livestock operations. Before a loan is made the lending agency may ascertain from the range manager the status of the grazing license or permit and other pertinent information relating thereto. A service fee of \$10 will be charged non-Federal lending agencies for such information.

(b) A borrower-permittee desiring an extension of the term of his permit may file a request therefor, in writing, with the range manager, setting forth the name of the lending agency, purpose and amount of loan, and the need for the extension of the permit term. When it appears that such extension will be in accordance with applicable law and regulation and not contrary to the public interest, the range manager, in his discretion, may extend the permit for a period not to exceed 10 years from the date of the loan, subject to the rules and regulations then in force and to such additional terms and conditions as the range manager may provide. The provisions of this paragraph shall not be applicable to grazing licenses which are issued annually on a temporary basis prior to the issuance of term permits.

(c) If the base property to which the grazing privileges on the Federal range

covered by the pledged license or permit are attached as a grazing unit is acquired by the lending agency through foreclosure or otherwise, such agency, or purchasers, lessees, or occupants of the property authorized by such agency, if qualified, may apply to be recognized as the successor licensee, or permittee. If in selling the property the lending agency takes back a mortgage on the base property, the agency will receive the same consideration as in the case of an original loan.

(d) Where a lending agency files with the range manager notice that it has made a loan and has accepted a grazing license or permit as security therefor in conformity with the provisions of this section, the range manager as a matter of cooperation will keep such agency advised of any adverse action affecting the license or permit, but the failure to give timely notice of such adverse action shall impose no legal liability or obligation on the range manager or the Bureau or any of its employees.

§ 161.19 *Saving clause.* So far as practicable and consistent with the purposes and provisions of the act and the basic policy and plan of administration outlined in § 161.1 (a) of the Federal Range Code for Grazing Districts, the provisions of §§ 161.1 to 161.19 inclusive of the Code will not be applied to the prejudice of the position of anyone who on the date of approval of these regulations was the holder of a grazing license or permit or who on that date had pending an application therefor.

Interested persons may submit in triplicate written comments, suggestions, or objections with respect to the regulations to the Bureau of Land Management, Washington 25, D. C., within 30 days from the date of publication in the FEDERAL REGISTER.

CLARENCE A. DAVIS,
Acting Secretary of the Interior

DECEMBER 19, 1955.

[F. R. Doc. 55-10282; Filed, Dec. 22, 1955;
8:45 a. m.]

**TITLE 43—PUBLIC LANDS:
INTERIOR**
**Chapter I—Bureau of Land Manage-
ment, Department of the Interior**

Subchapter A—Alaska
[Circular 1949]

**MISCELLANEOUS AMENDMENTS TO
SUBCHAPTER**

Subchapter A is amended as set forth below:

PART 61—CERTIFICATES AND SCRIP

Paragraph (b) of § 61.7 is amended to read as follows:

(b) That the land applied for does not extend more than 160 rods along the shore of any navigable water or that such restriction has been waived or should be waived. (See § 77.4 (b) of this subchapter.)

(R. S. 2478; 43 U. S. C. 1201. Interpret or apply 69 Stat. 444)

PART 64—HOMESITES OR HEADQUARTERS

1. Paragraph (g) of § 64.5 is revoked in its entirety and paragraphs (h) to (k) of § 64.5 are redesignated as paragraphs (g) to (j), respectively.

2. Paragraph (e) of § 64.12 is revoked in its entirety and paragraphs (f) to (j) of § 64.12 are redesignated as paragraphs (e) to (i), respectively.

(R. S. 2478; 43 U. S. C. 1201. Interpret or apply 69 Stat. 444)

PART 65—HOMESTEADS

1. Paragraph (a) of § 65.6 is amended to read as follows:

(a) That the land applied for does not extend more than 160 rods along the shore of any navigable water or that the restriction as to length of claim has been waived or should be waived. (See § 77.4 (b) of this subchapter.)

2. Paragraph (b) of § 65.20 is amended to read as follows:

(b) Petition for survey should be filed in triplicate and should describe the land settled upon by metes and bounds with relation to some natural or permanent monument, and give the approximate latitude and longitude and otherwise with as much certainty as possible without actual survey. Reference should be made to the serial number of the notice of settlement previously filed. If there has been any material deviation made in the description of land claimed, a full explanation must be given of the reason for such deviation. The petition should show the date when the settlement was made, the dates from which and to which the settler has resided upon the land,

the number of acres cultivated each year and the results of the cultivation, and the character and value of the improvements on the land. The petition should also show that the land does not extend more than 160 rods along the shore of any navigable water or that the restriction as to length of claim has been or should be waived. (See § 77.4 (b) of this subchapter.) The petition must be signed by the applicant and should be corroborated by the statements of two persons having knowledge of the facts.

3. Paragraph (f) of § 65.28 is amended to read as follows:

(f) No showing as to springs or water holes is required in connection with homestead entries within national forests in Alaska.

(R. S. 2478; 43 U. S. C. 1201. Interpret or apply 69 Stat. 444)

PART 67—INDIANS AND ESKIMOS

Section 67.8 is amended to read as follows:

§ 67.8 *Shore space.* An Indian allotment may not extend more than 160 rods along the shore of any navigable water unless the restriction as to length of claim has been or can be waived. (See § 77.4 (b) of this subchapter.)

(R. S. 2478; 43 U. S. C. 1201. Interpret or apply 69 Stat. 444)

**PART 68—LANDING AND WHARF PERMITS ON
RESERVED SHORE SPACES**

Part 68 is revoked in its entirety.

PART 74—RIGHTS-OF-WAY

Section 74.27 is amended to read as follows:

§ 74.27 *Rights-of-way for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures.*

(a) The act of July 24, 1947 (61 Stat. 418; 48 U. S. C. 321d), amended the act of June 30, 1932 (47 Stat. 446), by providing that in all patents for lands taken up, entered, or located in the Territory of Alaska after July 24, 1947, and in all deeds by the United States issued after July 24, 1947, conveying any lands to which it may have reacquired title in

said Territory not included within the limits of any organized municipality, there shall be expressed that there is reserved, from the lands described in said patent or deed, a right-of-way thereon for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures constructed or to be constructed by or under the authority of the United States or of any State created out of the Territory of Alaska.

(b) When a right-of-way reserved under the provisions of this act is utilized by the United States or under its authority, the head of the agency in charge of such utilization is authorized to determine and make payment for the value of the crops thereon if not harvested by the owner, and for the value of any improvements, or for the cost of removing them to another site, if less than their value.

(R. S. 2478; 43 U. S. C. 1201. Interpret or apply 69 Stat. 444)

PART 75—SALES AND LEASES

1. Section 75.19 is amended to read as follows:

§ 75.19 *Statutory authority.* The sale, at public auction, of tracts not exceeding 160 acres in the aggregate, which have been classified as suitable for industrial or commercial purposes, including construction of housing, is authorized by the act of August 30, 1949 (63 Stat. 679, 48 U. S. C. 364a-364e).

2. Paragraph (d) of § 75.22 is revoked in its entirety.

(R. S. 2478; 43 U. S. C. 1201. Interpret or apply 69 Stat. 444)

**PART 76—SCHOOL LAND RESERVATION;
GRANT FOR UNIVERSITY**

1. Paragraph (b) of § 76.2 is amended to read as follows:

(b) That the land applied for does not extend more than 160 rods along the shore of any navigable water or that such restriction has been or should be waived (See § 77.4 (b) of this subchapter).

Published in 20 F. R. January 25, 1956

Copies to	Each AA	25	BFS	10
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	Each DGO	5	Miss Williams GS Room 3219	20
All Regional and Field Solicitor	1 ea.		Mrs. Jean Wright Room 6126	1

2. Paragraph (b) of § 76.6 is amended to read as follows:

(b) That the land applied for does not extend more than 160 rods along the shore of any navigable water or that such restriction has been or should be waived (See § 77.4 (b) of this subchapter).

(R. S. 2478; 43 U. S. C. 1201. Interpret or apply 69 Stat. 444)

PART 77—SHORE SPACE

1. Part 77 is completely revised to read as follows:

Sec.

77.1 Statutory authority.

77.2 Navigable waters defined.

77.3 Restriction as to length of claims; method of measuring length of shore space.

77.4 Waiver of 160-rod limitation.

AUTHORITY: §§ 77.1 to 77.4 issued under R. S. 2478; 43 U. S. C. 1201. Interpret or apply 69 Stat. 444.

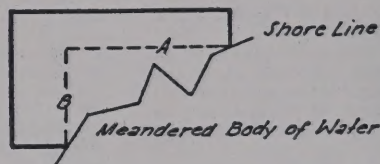
§ 77.1 *Statutory authority.* Section 1 of the act of May 14, 1898 (30 Stat. 409) as amended by the acts of March 3, 1903 (32 Stat. 1028) and August 3, 1955 (69 Stat. 444; 48 U. S. C. 371) provides that no entry shall be allowed extending more than 160 rods along the shore of any navigable water. Section 10 of the act of May 14, 1898, as amended by the acts of March 3, 1927 (44 Stat. 1364), May 26, 1934 (48 Stat. 809), and August 3, 1955 (69 Stat. 444; 48 U. S. C. 463, 461, 411), provides that trade and manufacturing sites, rights-of-way for terminals and junction points, and homesites and headquarters sites may not extend more than 80 rods along the shores of any navigable water.

§ 77.2 *Navigable waters defined.* The term "navigable waters" is defined in Section 2 of the act of May 14, 1898 (30 Stat. 409; 48 U. S. C. 411), "to include all tidal waters up to the line of ordinary high tide and all nontidal waters navigable in fact up to the line of ordinary highwater mark".

§ 77.3 *Restriction as to length of claims; method of measuring length of shore space.* (a) In the consideration of applications to enter lands shown upon plats of public surveys in Alaska, as abutting upon navigable waters, the restriction as to length of claims shall be determined as follows: The length of the water front of a subdivision will be considered as represented by the longest straight-line distance between the shore corners of the tract, measured along lines parallel to the boundaries of the subdivision; and the sum of the distances of each subdivision of the application abutting on the water, so determined, shall be considered as the total shore length of the application. Where, so measured, the excess of shore length is greater than the deficiency would be if an end tract or tracts were eliminated, such tract or tracts shall be excluded, otherwise the application may be allowed if in other respects proper.

(b) The same method of measuring shore space will be used in the case of special surveys, where legal subdivisions of the public lands are not involved.

(c) The following sketch shows the method of measuring the length of shore space, the length of line "A" or line "B", whichever is the longer, representing the length of shore space which is chargeable to the tract:



§ 77.4 *Waiver of 160-rod limitation.*

(a) The act of June 5, 1920 (41 Stat. 1059; 48 U. S. C. 372) provides that the Secretary of the Interior in his discretion, may upon application to enter or otherwise, waive the restriction that no entry shall be allowed extending more than 160 rods along the shore of any navigable waters as to such lands as he shall determine are not necessary for harborage, landing, and wharf purposes. The act does not authorize the waiver of the 80-rod restriction mentioned in § 77.1.

(b) Except as to trade and manufacturing sites, and home and headquarters sites, any applications to enter and notices of settlement which cover lands extending more than 160 rods along the shore of any navigable water will be considered as a petition for waiver of the 160-rod limitation mentioned in paragraph (a) of this section, provided that it is accompanied by a showing that the lands are not necessary for harborage, landing and wharf purposes and that the public interests will not be injured by waiver of the limitation.

PART 81—TRADE AND MANUFACTURING SITES

Paragraph (d) of § 81.6 is revoked in its entirety and paragraphs (e) and (f) of § 81.6 are redesignated as paragraphs (d) and (e), respectively.

(R. S. 2478; 43 U. S. C. 1201. Interpret or apply 69 Stat. 444)

DOUGLAS MCKAY,
Secretary of the Interior.

JANUARY 19, 1956.

[F. R. Doc. 56-582; Filed, Jan. 24, 1956;
8:45 a.m.]

2. Paragraph (b) of § 105 is amended to read as follows:

(b) That the land applied for does not extend more than 100 rods along the shore of any navigable water or that such restriction has been or should be waived since § 114 (b) of this subchapter.

(U. S. STAT. at U. S. C. 1901. Interpreted as apply to Alaska only.)

Page 17—Shore Space

1. Part VI is completely revised to read as follows:

- Sec.
- 101. Shallow water.
- 102. Navigable waters defined.
- 103. Restriction as to length of claims on basis of measuring length of shore space.
- 104. Waiver of 100-rod limitation.

Amended: § 103 to the effect under U. S. Stat. at U. S. C. 1901. Amended as apply to Alaska only.

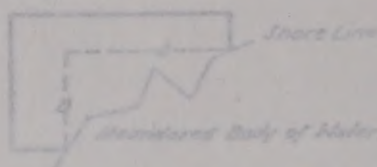
§ 101. Shallow water. Authority. Section 1 of the act of May 18, 1898 (30 Stat. 509) amended the act of March 3, 1899 (31 Stat. 1037), and August 5, 1901 (31 Stat. 494); as U. S. C. 1901 provides that neither shall a shallow water claim, more than 100 rods along the shore of any navigable water. Section 10 of the act of May 14, 1902 (32 Stat. 1264) amended § 1 of the act of March 3, 1899 (31 Stat. 1037), and § 10, 1902 (32 Stat. 1264), and August 5, 1901 (31 Stat. 494); as U. S. C. 1901, 1911, provides that lands and waterways other than 100 rods along the shore of any navigable water, and homestead and mining claims may not extend more than 10 rods along the shore of any navigable water.

§ 102. Navigable waters defined. The term "navigable waters" is defined in Section 1 of the act of May 18, 1898 (30 Stat. 509); as U. S. C. 1901, "to include all tidal waters up to the line of ordinary high tide and all navigable waters navigable in fact up to the line of ordinary low-water mark".

§ 103. Restriction as to length of claims; method of measuring length of shore space. (a) In the consideration of applications to enter lands shown upon plats of public surveys in Alaska, as showing open navigable waters, the restriction as to length of claims shall be determined as follows: The length of the water front of a subdivision will be considered as represented by the straight straight-line distance between the shore corners of the tract, measured along lines parallel to the boundaries of the subdivision; and the sum of the distances of each subdivision of the subdivision extending to the water, as aforesaid, shall be considered as the total shore length of the application. Where, as measured, the length of shore length is greater than the distance would be that and tract or tract were situated, each tract or tract shall be excluded, otherwise the application may be allowed if in other respects proper.

(b) The same method of measuring shore space will be used in the case of special surveys, where legal subdivisions of the public lands are not involved.

(c) The following sketch shows the method of measuring the length of shore space, the length of line "A" or line "B", whichever is the longer, representing the length of shore space which is allowable in the tract:



§ 104. Waiver of 100-rod limitation. (a) The act of June 3, 1900 (31 Stat. 1089) as U. S. C. 1901 provides that the Secretary of the Interior, in his discretion, may upon application in order of preference, waive the restriction that no tract shall be allowed extending more than 100 rods along the shore of any navigable waters as to such length as he shall determine are not necessary for temporary landing, and other purposes. The act also authorizes the waiver of the 100-rod limitation contained in paragraph (a) of this section, provided that it is accompanied by a showing that the lands are not necessary for navigation, landing and other purposes and that the public interests will not be injured by waiver of the limitation.

(b) Lands which have been relinquishing sites, and lands the headquarters sites, any subdivisions in such and extent of navigation which may have extending more than 100 rods along the shore of any navigable waters will be considered as a portion for waiver of the 100-rod limitation provided in paragraph (a) of this section, provided that it is accompanied by a showing that the lands are not necessary for navigation, landing and other purposes and that the public interests will not be injured by waiver of the limitation.

Page 18—Tracts and Measurements There

Paragraph (b) of § 115 is amended in the entirety and paragraphs (a) and (c) of § 115 are substituted as paragraphs (b) and (d), respectively.

(U. S. STAT. at U. S. C. 1901. Interpreted as apply to Alaska only.)

Thomas McKee,
Secretary of the Interior.

January 15, 1902.

(U. S. STAT. at U. S. C. 1901. Interpreted as apply to Alaska only.)

UNITED STATES DEPARTMENT OF THE INTERIOR

WASHINGTON

[Reprinted from FEDERAL REGISTER, Tuesday, March 27, 1956]

Replaced by 1999

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management

Subchapter P—Practice

Parts 220, 222, and 223 of 43 CFR are revoked and Part 221 is revised to read as follows:

PART 221—APPEALS AND CONTESTS

Subpart A—Appeals to the Director of the Bureau of Land Management

PLEADINGS

- Sec.
221.1 Who may appeal.
221.2 Appeal; how taken; mandatory time limit.
221.3 Statement of reasons; written arguments; briefs.
221.4 Service of notice of appeal and of other documents.
221.5 Answers.

REQUEST FOR HEARING; ORAL ARGUMENT

- 221.6 Hearings on appeals involving questions of fact.
221.7 Deposit.
221.8 Oral argument.

DECISIONS BY DIRECTOR

- 221.9 Action by Director on appeal.
221.10 Effect of failure to appeal.

PROCEEDINGS BEFORE FIELD COMMISSIONERS

- 221.11 Prehearing conferences.
221.12 Fixing of place and date for hearing; notice.
221.13 Postponements.
221.14 Authority of the Field Commissioner.
221.15 Conduct of hearing.
221.16 Evidence.
221.17 Reporter's fees.
221.18 Copies of transcript.
221.19 Summary of evidence.
221.20 Action by Field Commissioner.

Subpart B—Appeals to the Secretary of the Interior

- 221.31 Right of appeal to the Secretary of Interior.
221.32 Appeal, how taken; mandatory time limit.
221.33 Statement of reasons; written arguments; briefs.
221.34 Service of notice of appeal and of other documents.
221.35 Answers.
221.36 Oral argument.
221.37 Finality of decision.

Subpart C—Contests and Protests

PRIVATE CONTESTS AND PROTESTS

- 221.51 By whom private contest may be initiated.
221.52 Protests.
221.53 Initiation of contest.
221.54 Contents of complaint.
221.55 Amendment of complaint.

- Sec.
221.56 Corroboration required.
221.57 Filing fee.
221.58 Service.
221.59 Effect of answer.
221.60 When service may be made by publication.
221.61 Contents of published notice.
221.62 Publication, mailing and posting of notice.
221.63 Proof of service.
221.64 Answer to complaint.
221.65 Action by Manager.
221.66 Amendment of answer.

GOVERNMENT CONTESTS

- 221.67 Government contests.
221.68 Proceedings in Government contests.

PROCEEDINGS BEFORE THE FIELD COMMISSIONER

- 221.69 Prehearing conferences.
221.70 Fixing of place and date for hearing; notice.
221.71 Postponements.
221.72 Authority of the Field Commissioner.
221.73 Conduct of hearing.
221.74 Evidence.
221.75 Reporter's fees.
221.76 Decision of Field Commissioner.
221.77 Appeal to the Director.

Subpart D—General Provisions

- 221.91 Definitions.
221.92 When a document is filed.
221.93 Record address.
221.94 Transferees and encumbrancers.
221.95 Service.
221.96 Computation of time for filing and service.
221.97 Extensions of time.
221.98 Summary dismissal.
221.99 Basis of decisions; record.
221.100 Official notice.
221.101 Effect of decision pending appeal.
221.102 Regulations governing practice before the Department.
221.103 Inquiries.
221.104 Compulsory attendance of witnesses.
221.105 Application for subpoena.
221.106 Fees payable to witness who testifies on request without issuance of subpoena.
221.107 Power of Secretary.

AUTHORITY: §§ 221.1 to 221.107 issued under Revised Statutes 2478; 43 U. S. C. 1201.

PART 221—APPEALS AND CONTESTS

SUBPART A—APPEALS TO THE DIRECTOR OF THE BUREAU OF LAND MANAGEMENT¹

PLEADINGS

§ 221.1 *Who may appeal.* Any party to a case who is adversely affected by a decision of an officer of the Bureau of Land Management other than the Direc-

¹ In addition to the material under this heading, the general provisions under Subpart D of this part should be consulted.

tor or persons signing for the Director, shall have a right of appeal to the Director.

§ 221.2 *Appeal; how taken, mandatory time limit.* A person who wishes to appeal to the Director must file in the office of the officer who made the decision a notice that he wishes to appeal, accompanied by a \$5 filing fee. The notice must give the serial number or other identification of the case and must be received in such office within 30 days after the person taking the appeal received the decision he is appealing from. No extension of time will be granted for filing this notice. A notice of appeal which is filed late or which is not accompanied by the required filing fee will not be considered and the case will be closed by the officer from whose decision the appeal is taken. The notice of appeal may include a statement of the reasons for the appeal and any arguments the appellant wishes to make.

§ 221.3 *Statement of reasons; written arguments; briefs.* If the notice of appeal did not include a statement of the reasons for the appeal, such a statement must be filed in the office of the Director within 30 days after the notice of appeal is filed. Failure to file the statement of reasons within the time required will subject the appeal to summary dismissal as provided in § 221.98. In any case the appellant will be permitted to file in such office additional statements of reasons and written arguments or briefs within the 30-day period after he filed the notice of appeal.

§ 221.4 *Service of notice of appeal and of other documents.* The appellant must serve a copy of the notice of appeal and of any statement of reasons, written arguments or briefs on each adverse party named in the decision appealed from, in the manner prescribed in § 221.95, not later than 15 days after filing the document. Failure to serve within the time required will subject the appeal to summary dismissal as provided in § 221.98. Proof of such service as required by § 221.95 must be filed in the office of the Director within 15 days after service unless filed with the notice of appeal.

§ 221.5 *Answers.* If any party served with a notice of appeal wishes to participate in the proceeding on appeal, he must file an answer within 30 days after receipt of the notice of appeal or statement of reasons where such statement was not included in the notice of appeal. If new or additional reasons are filed by the appellant, the adverse party shall have 30 days after receipt thereof within

which to answer them. The answer must state the reasons why the answerer thinks the appeal should not be sustained. Answers must be filed in the office of the Director and must be served on the appellant in the manner prescribed in § 221.95, not later than 15 days thereafter. Proof of such service, as required by § 221.95, must be filed in the office of the Director within 15 days after service. Failure to answer will not result in a default. If an answer is not filed and served within the time required, it may be disregarded in deciding the appeal.

REQUEST FOR HEARING; ORAL ARGUMENT

§ 221.6 *Hearings on appeals involving questions of fact.* Either an appellant or an adverse party may, if he desires a hearing to present evidence on an issue of fact, request that the case be assigned to a Field Commissioner of the Bureau of Land Management for such a hearing. Such a request must be made in writing and filed with the Director within 30 days after answer is due and a copy of the request should be served on the opposing party in the case. The allowance of a request for hearing is within the discretion of the Director, and the Director may, on his own motion, refer any case to a Field Commissioner for a hearing on an issue of fact. If a hearing is ordered, the Director will specify the issues upon which the hearing is to be held.

§ 221.7 *Deposit.* If a request for a hearing is granted, a deposit of \$20 toward reporters' fees will be required of the parties who made the request. Other parties who appear at the hearing will be requested to pay their share of the fees at that time.

§ 221.8 *Oral argument.* The Director may, in his discretion, grant an opportunity for oral argument before him or a person designated by him.

DECISIONS BY DIRECTOR

§ 221.9 *Action by Director on appeal.* The Director will render a written decision in each case appealed to him. Such decisions will be served on all parties and shall be subject to an appeal to the Secretary as provided in § 221.31.

§ 221.10 *Effect of failure to appeal.* When any party fails to appeal to the Secretary from an adverse decision of the Director, that decision shall as to such party be final and will not be disturbed except for fraud or for gross irregularity.

PROCEEDINGS BEFORE FIELD COMMISSIONER

§ 221.11 *Prehearing conferences.* (a) The Field Commissioner may, in his discretion, on his own motion or motion of one of the parties or of the Bureau of Land Management, direct the parties or their representatives to appear at a specified time and place for a prehearing conference to consider: (1) The possibility of obtaining stipulations, admissions of facts and agreements to the introduction of documents, (2) the limitation of the

number of expert witnesses, and (3) any other matters which may aid in the disposition of the proceedings before the Field Commissioner or before the Director.

(b) The Field Commissioner shall make an order which recites the action taken at the conference and the agreements made as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admissions or agreements. Such order shall control the subsequent course of the proceeding before the Field Commissioner unless modified for good cause, by subsequent order.

§ 221.12 *Fixing of place and date for hearing; notice.* The Field Commissioner shall fix a place and date for the hearing and notify all parties and the Bureau.

§ 221.13 *Postponements.* (a) Postponements of hearings will not be allowed upon the request of any party or the Bureau except upon a showing of good cause and proper diligence. A request for a postponement must be served upon all parties to the proceeding and filed in the office of the Field Commissioner at least 10 days prior to the date of the hearing. In no case will a request for postponement served or filed less than 10 days in advance of the hearing or made at the hearing be granted unless the party requesting it demonstrates that an extreme emergency occurred which could not have been anticipated and which justifies beyond question the granting of a postponement. In any such emergency, if time does not permit of the filing of such request prior to the hearing, it may be made orally at the hearing.

(b) The request for a postponement must state in detail the reasons why a postponement is necessary. If a request is based upon the absence of witnesses, it must state what the substance of the testimony of the absent witnesses would be. No postponement will be granted if the adverse party or parties file with the Field Commissioner within 5 days after the service of the request a statement admitting that the witnesses on account of whose absence the postponement is desired would, if present, testify as stated in the request. If time does not permit the filing of such statement prior to the hearing, it may be made orally at the hearing.

(c) Only one postponement will be allowed to a party on account of the absence of witnesses unless the party requesting a further postponement shall at the time apply for an order to take the testimony of the alleged absent witness by deposition.

§ 221.14 *Authority of the Field Commissioner.* The Field Commissioner is vested with general authority to conduct the hearing in an orderly and judicial manner, including authority to subpoena witnesses and to take and cause depositions to be taken in accordance with the act of January 31, 1903 (32 Stat. 790; 43 U. S. C. 102-106), to administer

oaths, to call and question witnesses, to make proposed findings of fact and to take such other actions in connection with the hearing as may be prescribed by the Director in referring the case for hearing. The issuance of subpoenas, the attendance of witnesses, and the taking of depositions shall be governed by the applicable provisions of Subpart D of this part.

§ 221.15 *Conduct of hearing.* So far as not inconsistent with the prehearing order, the Field Commissioner may seek to obtain stipulations as to material facts. Unless the Field Commissioner directs otherwise, the appellant will present his evidence on the facts at issue following which the other parties and the Bureau of Land Management will present their evidence on such issues.

§ 221.16 *Evidence.* (a) All oral testimony shall be under oath and witnesses shall be subject to cross-examination. The Field Commissioner may question any witnesses. Documentary evidence may be received if pertinent to any issue. The Field Commissioner will summarily stop examination and exclude testimony which is obviously irrelevant and immaterial.

(b) Objections to evidence will be ruled upon by the Field Commissioner. Such rulings will be considered, but need not be separately ruled upon, by the Director in connection with his decision. Where a ruling of a Field Commissioner sustains an objection to the admission of evidence, the party affected may insert in the record, as a tender of proof, a summary written statement of the substance of the excluded evidence and the objecting party may then make an offer of proof in rebuttal.

§ 221.17 *Reporter's fees.* (a) Where a hearing is requested, each party and the Bureau will be required to pay the reporter's fees covering the party's or the Bureau's direct evidence and cross examination of other witnesses.

(b) Where a hearing is ordered by the Director upon his own motion, each party who prevails in the Director's decision will be required to pay the reporter's fees covering the party's direct evidence and cross examination of other witnesses. The remainder of the reporter's fees will be paid by the Government.

(c) Reporter's fees will be at rates established for the local courts or, if the reporting is done pursuant to a contract, at rates established by the contract. The Field Commissioner may require the parties to make reasonable deposits for reporter's fees from time to time in advance of taking testimony. Any part of a deposit not used will be returned to the depositor except that deposits which are required pursuant to § 221.7 in advance of a hearing will not be returned if the party making the deposit does not appear at the hearing, but will be used to pay the reporter's appearance fee, if any, and the remainder will be forfeited to the United States.

§ 221.18 *Copies of transcript.* Each party must pay for any copies of the

transcript obtained by him. Unless a summary of the evidence is stipulated to, the Government will file the original copy of the transcript with the case record.

§ 221.19 *Summary of evidence.* The parties and the Bureau may, with the consent of the Field Commissioner, agree that a summary of the evidence approved by the Field Commissioner may be filed in the case in lieu of a transcript. In such case the Field Commissioner will prepare the summary or have it prepared and upon agreement of the parties make it a part of the case record. If, on appeal to the Secretary, a party wishes to utilize the transcript instead of the summary, he must furnish at his expense a copy of the transcript for the case record.

§ 221.20 *Action by Field Commissioner.* Upon completion of the hearing and the incorporation of the summary or transcript in the record, the Field Commissioner will send the record and proposed findings of fact on the issues presented at the hearing to the Director. The proposed findings of fact will not be served upon the parties; however, the parties and the Bureau may, within 15 days after the completion of the transcript or the summary of the evidence, file with the Director such briefs or statements as they may wish respecting the facts developed at the hearing. Any findings of fact made or adopted by the Director will be subject to attack in an appeal to the Secretary.

SUBPART B—APPEALS TO SECRETARY OF THE INTERIOR¹

§ 221.31 *Right of appeal to the Secretary of the Interior.* Any party adversely affected may appeal to the Secretary of the Interior from a final decision of the Director, whether such final decision is on an appeal or is an original decision, except from such a decision which, prior to promulgation, has been approved by the Secretary. No appeal, however, may be taken from a decision of the Director affirming a decision of a subordinate official of the Bureau in any case where the party adversely affected shall have failed to appeal from the decision of such official.

§ 221.32 *Appeal, how taken; mandatory time limit.* A person who wishes to appeal to the Secretary from a decision of the Director must file in the office of the Director a notice that he wishes to appeal, accompanied by a \$5 filing fee. The notice must give the serial number or other identification of the case and must be received in such office within 30 days after the person taking the appeal received the decision he is appealing from. No extension of time will be granted for filing this notice. A notice of appeal which is filed late or which is not accompanied by the required filing fee will not be considered and the case will be closed by the Director. The

notice of appeal may include a statement of the reasons for the appeal and any arguments the appellant wishes to make.

§ 221.33 *Statement of reasons; written arguments; briefs.* If the notice of appeal did not include a statement of the reasons for the appeal, such a statement must be filed in the office of the Secretary within 30 days after the notice of appeal is filed. Failure to file the statement of reasons within the time required will subject the appeal to summary dismissal as provided in § 221.98. In any case, the appellant will be permitted to file additional statements, reasons, written arguments and briefs within the 30-day period after he filed the notice of appeal.

§ 221.34 *Service of notice of appeal and of other documents.* The appellant must serve a copy of the notice of appeal and of any statement of reasons, written arguments or briefs on each adverse party named in the Director's decision not later than 15 days after filing the document. Failure to serve within the time required will subject the appeal to summary dismissal as provided in § 221.98. Proof of such service as required by § 221.95 must be filed in the office of the Secretary within 15 days after service unless filed with the notice of appeal.

§ 221.35 *Answers.* If a party served with a notice of appeal wishes to participate in the proceeding on appeal, he must file an answer within 30 days after receipt of the notice of appeal or statement of reasons where such statement was not included in the notice of appeal. If new or additional reasons are filed by the appellant, the adverse party shall have 30 days after receipt thereof within which to answer them. The answer must state the reasons why the answerer thinks the appeal should not be sustained. Answers must be filed in the office of the Secretary and must be served on the appellant, in the manner prescribed in § 221.95, not later than 15 days thereafter. Proof of such service as required by § 221.95 must be filed in the office of the Secretary within 15 days after service. Failure to answer will not result in a default. If an answer is not filed and served within the time required, it may be disregarded in deciding the appeal.

§ 221.36 *Oral argument.* The Secretary may in his discretion grant an opportunity for oral argument before him or a person designated by him.

§ 221.37 *Finality of decision.* No appeal will lie in the Department from a decision of the Secretary.

SUBPART C—CONTESTS AND PROTESTS¹

PRIVATE CONTESTS AND PROTESTS

§ 221.51 *By whom private contest may be initiated.* Any person who claims title to or an interest in land adverse to

any other person claiming title to or an interest in such land or who seeks to acquire a preference right pursuant to the act of May 14, 1880, as amended (43 U. S. C. 185), or the act of March 3, 1891 (43 U. S. C. 329), may initiate proceedings to have the claim of title or interest adverse to his claim invalidated for any reason not shown by the records of the Bureau of Land Management. Such a proceeding will constitute a private contest and will be governed by the regulations in this part.

§ 221.52 *Protests.* Where the elements of a contest are not present, any objection raised by any person to any action proposed to be taken in any proceeding before the Bureau will be deemed to be a protest and such action thereon will be taken as is deemed to be appropriate in the circumstances.

§ 221.53 *Initiation of contest.* Any person desiring to initiate a private contest must file a complaint and proof of service of a copy of the complaint on the contestee in the land office which has jurisdiction over the land involved, or, if there is no such land office, in the office of the Director, Bureau of Land Management, Washington 25, D. C.

§ 221.54 *Contents of complaint.* The complaint shall contain the following information, under oath:

(a) The name and address of each party interested, including the age of each heir of any deceased entryman.

(b) A legal description of the land involved.

(c) A reference, so far as known to the contestant, to any proceedings pending for the acquisition of title to, or an interest in, such land.

(d) A statement in clear and concise language of the facts constituting the grounds of contest.

(e) A statement of the law under which contestant claims or intends to acquire title to, or an interest in, the land and of the facts showing that he is qualified to do so.

(f) A statement that the proceeding is not collusive or speculative but is instituted and will be diligently pursued in good faith.

(g) A request that the contestant be allowed to prove his allegations and that the adverse interest be invalidated.

(h) The office in which the complaint is filed and the address to which papers shall be sent for service on the contestant.

(i) A notice that unless the contestee files an answer to the complaint in such office within 30 days after service of the notice, the allegations of the complaint will be taken as confessed. If the complaint does not meet each of these requirements, it will be summarily dismissed.

§ 221.55 *Amendment of complaint.* Except insofar as the Manager, Field Commissioner, Director or Secretary may raise issues in connection with deciding a contest, issues not raised in a complaint may not be raised later by the

¹In addition to the material under this heading, the general provisions under Subpart D of this part should be consulted.

¹In addition to the material under this heading, the general provisions under Subpart D of this part should be consulted.

contestant unless the Field Commissioner permits the complaint to be amended after due notice to the other parties and an opportunity to object.

§ 221.56 *Corroboration required.* All allegations of fact in the complaint which are not matters of official record or capable of being judicially noticed and which, if proved, would invalidate the adverse interest must be corroborated under oath by the statement of witnesses. Each such allegation of fact must be corroborated by the statement of at least one witness having personal knowledge of the alleged fact and such fact must be set forth in the statement. All statements by witnesses shall be attached to the complaint.

§ 221.57 *Filing fee.* Each complaint must be accompanied by a filing fee of \$10 and a deposit of \$20 toward reporter's fees.

§ 221.58 *Service.* (a) The complaint must be served upon every contestee. If the contestee is of record in the land office, service may be made and proved as provided in § 221.95. If the person to be served is not of record in the land office, proof of service may be shown by a written statement of the person who made personal service, by post-office return receipt showing personal delivery, or by an acknowledgment of service. In certain circumstances, service may be made by publication as provided in § 221.60.

(b) When the contest is against the heirs of a deceased entryman, the notice shall be served on each heir. If the person to be personally served is an infant or a person who has been legally adjudged of unsound mind, service of notice shall be made by delivering a copy of the notice to the legal guardian or committee, if there be one, of such infant or person of unsound mind; if there be none, then by delivering a copy of the notice to the person having the infant or person of unsound mind in charge.

§ 221.59 *Effect of answer.* Where a contestee answers without questioning the service or proof of service of the complaint, any defect in service will be deemed waived.

§ 221.60 *When service may be made by publication.* When the contestant has made diligent search and inquiry to locate the contestee, and cannot locate him, the contestant may proceed with service by publication after first filing with the Manager an affidavit which shall:

(a) State that the contestee could not be located after diligent search and inquiry made within 15 days prior to the filing of the affidavit;

(b) Be corroborated by the affidavits of two persons who live in the vicinity of the land which state that they have no knowledge of the contestee's whereabouts or which give his last known address;

(c) State the last known address of the contestee; and

(d) State in detail the efforts and in-

quiries made to locate the party sought to be served.

§ 221.61 *Contents of published notice.* The published notice must give the names of the parties to the contest, legal description of the land involved, the substance of the charges contained in the complaint, the office in which the contest is pending, and a statement that upon failure to file an answer in such office within 30 days after the completion of publication of such notice, the allegations of the complaint will be taken as confessed. The published notice shall also contain a statement of the dates of publication.

§ 221.62 *Publication, mailing and posting of notice.* (a) Notice by publication shall be made by publishing notice at least once a week for five successive weeks in some newspaper of general circulation in the county in which the land in contest lies.

(b) Within 15 days after the first publication of a notice, the contestant shall send a copy of the notice and the complaint by registered or certified mail, return receipt requested, to the contestee at his last known address and also to the contestee in care of the post office nearest the land. The return receipts shall be filed in the office in which the contest is pending.

(c) A copy of the notice as published shall be posted in the office where the contest is pending and also in a conspicuous place upon the land involved. Such postings shall be made within 15 days after the first publication of the notice.

§ 221.63 *Proof of service.* (a) Proof of publication of the notice shall be made by filing in the office where the contest is pending a copy of the notice as published and the affidavit of the publisher or foreman of the newspaper publishing the same showing the publication of the notice in accordance with § 221.62.

(b) Proof of posting of the notice shall be by affidavit of the person who posted the notice on the land and by the certificate of the Manager or the Director as to posting in his office.

(c) Proof of the mailing of notice shall be by affidavit of the person who mailed the notice to which shall be attached the return receipt.

§ 221.64 *Answer to complaint.* Within 30 days after service of the complaint or after the last publication of the notice, the contestee must file in the office where the contest is pending an answer specifically meeting and responding to the allegations of the complaint, together with proof of service of a copy of the answer upon a contestant as provided in § 221.95. The answer shall contain or be accompanied by the address to which all notices or other papers shall be sent for service upon contestee.

§ 221.65 *Action by Manager.* (a) If an answer is not filed as required, the allegations of the complaint will be taken as admitted by the contestee and the Manager will decide the case without a hearing.

(b) If an answer is filed and unless all parties waive a hearing, the Manager will refer the case to a Field Commissioner upon determining that the elements of a private contest appear to have been established.

§ 221.66 *Amendment of answer.* At the hearing, any allegation not denied by the answer will be considered admitted. The Field Commissioner may permit the answer to be amended after due notice to other parties and an opportunity to object.

GOVERNMENT CONTESTS

§ 221.67 *Government contests.* The Government may initiate contests for any cause affecting the legality or validity of any entry or settlement or mining claim.

§ 221.68 *Proceedings in Government contests.* The proceedings in Government contests shall be governed by the rules relating to proceedings in private contests with the following exceptions:

(a) No corroboration shall be required of a Government complaint.

(b) No filing fee or deposit toward reporter's fee shall be required of the Government.

(c) Any action required of the contestant may be taken by any authorized Government employee.

(d) The statement required by § 221.54 (e) need not be included in the complaint.

(e) No posting of notice of publication on the land in issue shall be required of the Government.

PROCEEDINGS BEFORE THE FIELD COMMISSIONER

§ 221.69 *Prehearing conferences.* (a) The Field Commissioner may in his discretion, on his own motion or on motion of one of the parties, or of the Bureau, direct the parties or their representatives to appear at a specified time and place for a prehearing conference to consider: (1) The simplification of the issues, (2) the necessity of amendments to the pleadings, (3) the possibility of obtaining stipulations, admissions of facts and agreements to the introduction of documents, (4) the limitation of the number of expert witnesses, and (5) such other matters as may aid in the disposition of the proceedings.

(b) The Field Commissioner shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admissions or agreements. Such order shall control the subsequent course of the proceedings before the Field Commissioner unless modified for good cause, by subsequent order.

§ 221.70 *Fixing of place and date for hearing; notice.* The Field Commissioner shall fix a place and date for the hearing and notify all parties and the Bureau.

§ 221.71 *Postponements.* (a) Postponements of hearings will not be allowed upon the request of any party or the Bureau except upon a showing of good cause and proper diligence. A request for a postponement must be served upon all parties to the proceeding and filed in the office of the Field Commissioner at least 10 days prior to the date of the hearing. In no case will a request for postponement served or filed less than 10 days in advance of the hearing or made at the hearing be granted unless the party requesting it demonstrates that an extreme emergency occurred which could not have been anticipated and which justifies beyond question the granting of a postponement. In any such emergency, if time does not permit the filing of such request prior to the hearing, it may be made orally at the hearing.

(b) The request for a postponement must state in detail the reasons why a postponement is necessary. If a request is based upon the absence of witnesses, it must state what the substance of the testimony of the absent witnesses would be. No postponement will be granted if the adverse party or parties file with the Field Commissioner within 5 days after the service of the request a statement admitting that the witnesses on account of whose absence the postponement is desired would, if present, testify as stated in the request. If time does not permit the filing of such statement prior to the hearing, it may be made orally at the hearing.

(c) Only one postponement will be allowed to a party on account of the absence of witnesses unless the party requesting a further postponement shall at the time apply for an order to take the testimony of the alleged absent witness by deposition.

§ 221.72 *Authority of the Field Commissioner.* The Field Commissioner is vested with general authority to conduct the hearing in an orderly and judicial manner, including authority to subpoena witnesses and to take and cause depositions to be taken in accordance with the act of January 31, 1903 (43 U. S. C. 102-106), to administer oaths, to call and question witnesses, and to make a decision. The issuance of subpoenas, the attendance of witnesses and the taking of depositions shall be governed by the applicable provisions of Subpart D of this part.

§ 221.73 *Conduct of hearing.* So far as not inconsistent with a prehearing order, the Field Commissioner may seek to obtain stipulations as to material facts and the issues involved and may state any other issues on which he may wish to have evidence presented. He may exclude irrelevant issues. The contestant will then present his case following which the other parties (and in private contests the Bureau, if it intervenes) will present their cases.

§ 221.74 *Evidence.* (a) All oral testimony shall be under oath and witnesses shall be subject to cross examination.

The Field Commissioner may question any witness. Documentary evidence may be received if pertinent to any issue. The Field Commissioner will summarily stop examination and exclude testimony which is obviously irrelevant and immaterial.

(b) Objections to evidence will be ruled upon by the Field Commissioner. Such rulings will be considered, but need not be separately ruled upon, by the Director in connection with his decision. Where a ruling of a Field Commissioner sustains an objection to the admission of evidence, the party affected may insert in the record, as a tender of proof, a summary written statement of the substance of the excluded evidence, and the objecting party may then make an offer of proof in rebuttal.

§ 221.75 *Reporter's fees.* (a) Each party and the Bureau will be required to pay the reporter's fees covering the party's or the Bureau's direct evidence and cross examination of other witnesses except that (1) the Government will pay all reporter's fees where it has brought a contest against a claim, an entry, or an application for patent and the contest is finally terminated adversely to the Government, and (2) a contestant claiming a preference right of entry under section 2 of the act of May 14, 1880 (43 U. S. C. 185), or the act of March 3, 1891 (43 U. S. C. 329), will be required to pay all costs of the contest.

(b) In any case, each party must pay for any copies of the transcript obtained by him. Reporter's fees will be at the rates established for the local courts, or, if the reporting is done pursuant to a contract, at rates established by the contract. The Field Commissioner may require the parties to make reasonable deposits for reporter's fees from time to time in advance of taking testimony. Any part of a deposit not used will be returned to the depositor except that deposits which are required to be made when a complaint is filed will not be returned if the party making the deposit does not appear at the hearing, but will be used to pay the reporter's appearance fee, if any, and the remainder will be forfeited to the United States.

§ 221.76 *Decision of Field Commissioner.* The Field Commissioner will make a decision and serve it on all parties.

§ 221.77 *Appeal to Director.* Any party, including the Government, adversely affected by the decision of the Field Commissioner may appeal to the Director as provided in Subpart A of this part. No further hearing will be allowed in connection with the appeal to the Director but the Director, after considering the evidence, may remand any case for further hearing if he considers such action necessary to develop the facts.

SUBPART D—GENERAL PROVISIONS

§ 221.91 *Definitions.* As used in this part:

(a) "Secretary" means the Secretary

of the Interior or his authorized representatives.

(b) "Director" means the Director of the Bureau of Land Management, the Associate Director or an Assistant Director.

(c) "Bureau" means Bureau of Land Management.

§ 221.92 *When a document is filed.* A document is filed in the office where the filing is required when received during the regular office hours by a party authorized to receive it.

§ 221.93 *Record address.* Every person who files a document in connection with an appeal, contest or protest shall at the time of his initial filing in the matter state his address. Thereafter he must promptly inform the office in which the filing was made of any change in address, giving the serial or other appropriate numbers of all matters in which he has made such a filing. The successors of such person shall likewise promptly inform such office of their interest in the matters and state their addresses. If a person fails to furnish a record address as required in this section, he will not be entitled to notice in connection with the proceedings on the matter.

§ 221.94 *Transferees and encumbrancers.* Transferees and encumbrancers of land, the title to which is claimed or is in the process of acquisition under any public land law shall, upon filing notice of the transfer or encumbrance in the proper land office, become entitled to receive and be given the same notice of any contest, appeal, or other proceeding thereafter initiated affecting such interest which is required to be given to a party to the proceeding. Every such notice of a transfer or encumbrance will be noted upon the records of the land office. Thereafter such transferee or encumbrancer must be made a party to any proceedings thereafter initiated adverse to the entry.

§ 221.95 *Service.* (a) Wherever the regulations in this part require that a copy of a document be served upon a person, service may be made by delivering the copy personally to him or by sending the document by registered or certified mail, return receipt requested, to his address of record in the Bureau.

(b) In any case service may be proved by an acknowledgment of service signed by the person to be served. Personal service may be proved by a written statement of the person who made such service. Service by registered or certified mail may be proved by a post-office return receipt showing that the document was delivered at the person's record address or showing that the document could not be delivered to such person at his record address because he had moved therefrom without leaving a forwarding address or because delivery was refused at that address or because no such address exists. Proof of service of a copy of a document should be filed in the same office in which the document

is filed except that proof of service of a notice of appeal should be filed in the office of the officer to whom the appeal is made, if the proof of service is filed later than the notice of appeal.

(c) A document will be considered to have been served at the time of personal service, of delivery of a registered or certified letter, or of the return by the post-office of an undelivered registered or certified letter.

(d) In all cases where a party is represented by an attorney, such attorney will be recognized as fully controlling the same on behalf of his client, and service of any document relating to the proceeding upon such attorney will be deemed to be service on the party he represents. Where a party is represented by more than one attorney, service upon one of the attorneys shall be sufficient.

§ 221.96 *Computation of time for filing and service.* In computing any period of time prescribed for filing and serving a document, the day upon which the decision or document to be appealed from or answered was received or the day of any other event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, Federal legal holiday, or other non-business day, in which event the period runs until the end of the next day which is not a Saturday, Sunday, Federal legal holiday, or other non-business day. When the time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, Federal legal holidays, and other non-business days shall be excluded in the computation.

§ 221.97 *Extensions of time.* (a) With the exception of the time fixed for filing a notice of appeal, the time for filing or serving any document in connection with an appeal may be extended by the officer to whom the appeal is taken.

(b) The Manager or the Field Commissioner, as the case may be, may extend the time for filing or serving any document in connection with a contest.

(c) A request for an extension of time must be filed within the time allowed for the filing or serving of the document and must be filed in the same office in which the document in connection with which the extension is requested must be filed.

§ 221.98 *Summary dismissal.* An appeal to the Director or to the Secretary will be subject to summary dismissal by the officer to whom it is made for any of the following causes:

(a) If a statement of the reasons for the appeal is not included in the notice of appeal and is not filed within the time required;

(b) If the notice of appeal is not served upon adverse parties within the time required; and

(c) If the statement of reasons, if not contained in the notice of appeal, is not served upon adverse parties within the time required.

§ 221.99 *Basis of decisions; record.*

(a) The record of a hearing shall consist of the transcript of testimony or summary of testimony and exhibits together with all papers and requests filed in the hearing.

(b) If a hearing has been held on an appeal pursuant to instructions of the Director, this record shall be the sole basis for decision insofar as the referred issues of fact are involved except to the extent that official notice may be taken of a fact as provided in § 221.100.

(c) Where a hearing has been held in a contest the record made shall be the sole basis for decision except to the extent that official notice may be taken of a fact as provided in § 221.100.

(d) In any case, no decision on appeal or in a contest shall be based upon any record, statement, file or similar document which is not open to inspection by the parties to the appeal or contest.

§ 221.100 *Official notice.* Official notice may be taken of the contents of the tract books, the serial registers, the approved plats of survey and other public records of the Department of the Interior and of any matter of which the courts may take judicial notice. Where a decision in a case in which a hearing has been held rests upon official notice of a material fact relating to an issue upon which the hearing was held, the decision will so state and will allow any party upon request to have an opportunity to show to the contrary. Such request must be filed and served within the time and in the manner prescribed in the decision. Where a decision or recommendation has rested upon such official notice and has afforded the parties an opportunity to show to the contrary, no further opportunity to show to the contrary will be allowed.

§ 221.101 *Effect of decision pending appeal.* Normally a decision will not be effective during the time in which a person adversely affected may file a notice of appeal, and the timely filing of a notice of appeal will suspend the effect of the decision appealed from pending the decision on appeal. However, when the public interest requires, the officer to whom an appeal may be or is taken may provide that a decision or any part of it shall be in full force and effect immediately.

§ 221.102 *Regulations governing practice before the Department.* Every individual who wishes to practice before the Department of the Interior, including the Bureau, must comply with the requirements of Part 1 of this title.

§ 221.103 *Inquiries.* No person other than officers or employees of the Department of the Interior shall direct any inquiry to any employee of the Bureau with respect to any matter pending before it other than to the head of the unit in which the matter is pending, to a superior officer, or to an employee of the unit authorized by the unit head to answer inquiries.

§ 221.104 *Compulsory attendance of witnesses.* The Field Commissioner is authorized to issue subpoenas directing the attendance of witnesses at hearings to be held before him or at the taking of depositions to be held before other officers. The issuance of subpoenas, service, attendance fees, and similar matters, shall be governed by the act of January 31, 1903 (43 U. S. C. 102-106) and 28 U. S. C. 1821. Subpoenas will be issued on Form No. 4-622.

§ 221.105 *Application for subpoena.* An application for a subpoena may be filed in the office of the Field Commissioner before whom the hearing is to be held, in the office of the officer who made the decision appealed from or in the office of the manager in which a complaint was filed, in which case the officer or manager will forward the application to the Field Commissioner.

§ 221.106 *Fees payable to witness who testifies on request without issuance of subpoena.* Any witness who attends any hearing or the taking of any deposition at the request of any party to the controversy without having been subpoenaed to do so shall be entitled to the same mileage and attendance fees to which he would have been entitled if he had been first duly subpoenaed as a witness on behalf of such party.

§ 221.107 *Power of Secretary.* Nothing in this part shall be construed to deprive the Secretary of any power conferred upon him by law.

The revision of Part 221 shall become effective as to all appeals taken from decisions by subordinate officers of the Bureau of Land Management or from decisions by the Director or his authorized representative which are dated on or after the first day of the second month commencing after the adoption of this revision of Part 221 and as to all private and Government contests and all protests initiated or filed on or after such effective date. Parts 220, 222, and 223 shall continue to govern proceedings until such time as the revised Part 221 becomes effective as to those proceedings.

CLARENCE A. DAVIS,
Acting Secretary of the Interior.

MARCH 20, 1956.

[F. R. Doc. 56-2286; Filed, Mar. 26, 1956;
8:49 a. m.]

